



**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION   | PENALTY CONSIDERATIONS  | CORRECTIVE ACTIONS TAKEN/REQUIRED   |
|---|---|---|
| <p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint<br/> <input checked="" type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b><br/>None</p> <p><b>Date of Investigation Relating to this Case:</b><br/>April 14, 2005</p> <p><b>Date(s) of NOV Relating to this Case:</b><br/>June 13, 2005 (NOV)</p> <p><b>Background Facts:</b> The EDPRP was filed on March 10, 2006. An Agreed Order was then negotiated. The signed Agreed Order and check for payment in full was received and the case was set for Agenda.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PST</b></p> <p>1) Failed to ensure that a legible tag, label, or marking with the tank number was permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p> <p>2) Failed to conduct effective manual or automatic inventory control procedures for all UST system at the facility [30 TEX. ADMIN. CODE § 334.48(c)].</p> | <p><b>Total Assessed:</b> \$3,500</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$3,500</p> <p>The Respondent has paid the \$3,500 administrative penalty in full.</p> <p><b>Site Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p>The Respondent shall undertake the following technical requirements:</p> <p>1) Within 30 days,</p> <p>a) ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; and</p> <p>b) begin conducting effective manual or automatic inventory control procedures for the UST system at the facility.</p> <p>2) Within 45 days, submit written, notarized certification with detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with these Ordering Provisions.</p> |



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

|              |          |             |           |             |         |
|--------------|----------|-------------|-----------|-------------|---------|
| <b>DATES</b> | Assigned | 13-Jun-2005 |           |             |         |
|              | PCW      | 07-Apr-2006 | Screening | 25-Jun-2005 | EPA Due |

|  |                                     |                    |              |  |  |
|--|-------------------------------------|--------------------|--------------|--|--|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                                     |                    |              |  |  |
| Respondent                             | Kuang Phou dba Ken's Minit Market 3 |                    |              |  |  |
| Reg. Ent. Ref. No.                     | RN102964624                         |                    |              |  |  |
| Facility/Site Region                   | 10-Beaumont                         | Major/Minor Source | Minor Source |  |  |

|                         |                        |                   |                    |          |  |
|-------------------------|------------------------|-------------------|--------------------|----------|--|
| <b>CASE INFORMATION</b> |                        |                   |                    |          |  |
| Enf./Case ID No.        | 25953                  | No. of Violations | 2                  |          |  |
| Docket No.              | 2005-1053-PST-E        | Order Type        | 1660               |          |  |
| Media Program(s)        | Petroleum Storage Tank | Enf. Coordinator  | Jaime Garza        |          |  |
| Multi-Media             |                        | EC's Team         | Enforcement Team 3 |          |  |
| Admin. Penalty \$       | Limit Minimum          | \$0               | Maximum            | \$10,000 |  |

## Penalty Calculation Section

|   |                   |                |
|---|-------------------|----------------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | <b>\$3,500</b> |
|---|-------------------|----------------|

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

|                           |                |                                |            |
|---------------------------|----------------|--------------------------------|------------|
| <b>Compliance History</b> | 0% Enhancement | <b>Subtotals 2, 3, &amp; 7</b> | <b>\$0</b> |
|---------------------------|----------------|--------------------------------|------------|

Notes: No adjustment to the compliance history.

|                    |    |                |                   |            |
|--------------------|----|----------------|-------------------|------------|
| <b>Culpability</b> | No | 0% Enhancement | <b>Subtotal 4</b> | <b>\$0</b> |
|--------------------|----|----------------|-------------------|------------|

Notes: The respondent does not meet the culpability criteria.

|                                    |              |                   |            |
|------------------------------------|--------------|-------------------|------------|
| <b>Good Faith Effort to Comply</b> | 0% Reduction | <b>Subtotal 5</b> | <b>\$0</b> |
|------------------------------------|--------------|-------------------|------------|

|               |  |                               |
|---------------|--|-------------------------------|
|               | Before NOV                               | NOV to EDPRP/Settlement Offer |
| Extraordinary |  |                               |
| Ordinary      |  |                               |
| N/A           | X  | (mark with a small x)         |
| Notes         | The respondent is not yet in compliance. |                               |

|                         |                 |                   |            |
|-------------------------|-----------------|-------------------|------------|
| <b>Economic Benefit</b> | 0% Enhancement* | <b>Subtotal 6</b> | <b>\$0</b> |
|-------------------------|-----------------|-------------------|------------|

|                            |       |                                   |
|----------------------------|-------|-----------------------------------|
| Total EB Amounts           | \$2   | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$200 |                                   |

|                             |                       |                |
|-----------------------------|-----------------------|----------------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | <b>\$3,500</b> |
|-----------------------------|-----------------------|----------------|

|   |            |            |
|---|------------|------------|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | Adjustment | <b>\$0</b> |
|---|------------|------------|

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

Notes:

|                             |                |
|-----------------------------|----------------|
| <b>Final Penalty Amount</b> | <b>\$3,500</b> |
|-----------------------------|----------------|

|                                   |                               |                |
|-----------------------------------|-------------------------------|----------------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | <b>\$3,500</b> |
|-----------------------------------|-------------------------------|----------------|

|                 |              |                   |            |
|-----------------|--------------|-------------------|------------|
| <b>DEFERRAL</b> | 0% Reduction | <b>Adjustment</b> | <b>\$0</b> |
|-----------------|--------------|-------------------|------------|

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

Notes: This is not an expedited case.

|                        |                |
|------------------------|----------------|
| <b>PAYABLE PENALTY</b> | <b>\$3,500</b> |
|------------------------|----------------|

|                                |                                     |                   |                 |   |
|--------------------------------|-------------------------------------|-------------------|-----------------|---|
| <b>Screening Date</b>          | 25-Jun-2005                         | <b>Docket No.</b> | 2005-1053-PST-E | <b>PCW</b>                                |
| <b>Respondent</b>              | Kuang Phou dba Ken's Minit Market 3 |                   |                 | <i>Policy Revision 2 (September 2002)</i> |
| <b>Case ID No.</b>             | 25953                               |                   |                 | <i>PCW Revision May 19, 2005</i>          |
| <b>Reg. Ent. Reference No.</b> | RN102964624                         |                   |                 |   |
| <b>Media [Statute]</b>         | Petroleum Storage Tank              |                   |                 |   |
| <b>Enf. Coordinator</b>        | Jaime Garza                         |                   |                 |   |

**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 (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%      |
| <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)**

>> **Repeat Violator (Subtotal 3)**

**Adjustment Percentage (Subtotal 3)**

>> **Compliance History Person Classification (Subtotal 7)**

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

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

|                                |   |                                  |   |            |
|--------------------------------|---|----------------------------------|---|------------|
| <b>Screening Date</b>          | 25-Jun-2005   | <b>Docket No.</b>                | 2005-1053-PST-E                           | <b>PCW</b> |
| <b>Respondent</b>              | Kuang Phou dba Ken's Minit Market 3   |                                  | <i>Policy Revision 2 (September 2002)</i> |            |
| <b>Case ID No.</b>             | 25953   | <i>PCW Revision May 19, 2005</i> |   |            |
| <b>Reg. Ent. Reference No.</b> | RN102964624   |                                  |   |            |
| <b>Media [Statute]</b>         | Petroleum Storage Tank  |                                  |   |            |
| <b>Enf. Coordinator</b>        | Jaime Garza   |                                  |   |            |
| <b>Violation Number</b>        | 1   |                                  |   |            |
| <b>Primary Rule Cite(s)</b>    | 30 Tex. Admin. Code § 334.8(c)(5)(C)  |                                  |   |            |
| <b>Secondary Rule Cite(s)</b>  |   |                                  |   |            |
| <b>Violation Description</b>   | The respondent failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form. |                                  |   |            |
| <b>Base Penalty</b>            |   |                                  |   | \$10,000   |

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

|           |             |          |       |         |
|-----------|-------------|----------|-------|---------|
| OR        | <b>Harm</b> |          |       | Percent |
|           | Major       | Moderate | Minor |         |
|           | Actual      |          |       |         |
| Potential |             |          |       |         |

>> **Programmatic Matrix**

|   |       |          |       |          |
|---|-------|----------|-------|----------|
| Falsification   | Major | Moderate | Minor | Percent  |
|   | X     |          |       |          |
| Matrix Notes  |       |          |       | 10%      |
| The respondent failed to meet 100% of the rule requirement. |       |          |       |          |
| <b>Adjustment</b>   |       |          |       | -\$9,000 |
| <b>Base Penalty Subtotal</b>                                |       |          |       | \$1,000  |

**Violation Events**

Number of Violation Events

|                                |            |  |
|--------------------------------|------------|--|
| mark only one<br>use a small x | daily      |  |
|                                | monthly    |  |
|                                | quarterly  |  |
|                                | semiannual |  |
|                                | annual     |  |
| single event                   | X          |  |

**Violation Base Penalty**

One single event is recommended based on the April 14, 2005 investigation.

|  |  |
|--|--|
| <b>Economic Benefit (EB) for this violation</b>  | <b>Statutory Limit Test</b>  |
| Estimated EB Amount <input type="text" value="\$1"/>   | Violation Final Penalty Total <input type="text" value="\$1,000"/> |
| This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,000"/> |  |

### Economic Benefit Worksheet

Respondent **Kuang Phou dba Ken's Minit Market 3**  
 Case ID No. **25953**  
 Reg. Ent. Reference No. **RN102964624**  
 Media [Statute] **Petroleum Storage Tank**  
 Violation No. **1**

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

| Delayed Costs            |       |             |             |     |     |     |     |
|--------------------------|-------|-------------|-------------|-----|-----|-----|-----|
| Equipment                |       |             |             | 0.0 | \$0 | \$0 | \$0 |
| Buildings                |       |             |             | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)        |       |             |             | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction |       |             |             | 0.0 | \$0 | \$0 | \$0 |
| Land                     |       |             |             | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System    |       |             |             | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling        |       |             |             | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal     |       |             |             | 0.0 | \$0 | n/a | \$0 |
| Permit Costs             |       |             |             | 0.0 | \$0 | n/a | \$0 |
| Other (as needed)        | \$100 | 14-Apr-2005 | 15-Jun-2005 | 0.2 | \$1 | n/a | \$1 |

Notes for DELAYED costs

Estimated cost to label the tank fill ports. Date Required is the date of investigation 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

|                                |  |                           |                                    |            |
|--------------------------------|--|---------------------------|------------------------------------|------------|
| <b>Screening Date</b>          | 25-Jun-2005  | <b>Docket No.</b>         | 2005-1053-PST-E                    | <b>PCW</b> |
| <b>Respondent</b>              | Kuang Phou dba Ken's Minit Market 3  |                           | Policy Revision 2 (September 2002) |            |
| <b>Case ID No.</b>             | 25953  | PCW Revision May 19, 2005 |                                    |            |
| <b>Reg. Ent. Reference No.</b> | RN102964624  |                           |                                    |            |
| <b>Media [Statute]</b>         | Petroleum Storage Tank   |                           |                                    |            |
| <b>Enf. Coordinator</b>        | Jaime Garza  |                           |                                    |            |
| <b>Violation Number</b>        | 2  |                           |                                    |            |
| <b>Primary Rule Cite(s)</b>    | 30 Tex. Admin. Code § 334.48(c)  |                           |                                    |            |
| <b>Secondary Rule Cite(s)</b>  |  |                           |                                    |            |
| <b>Violation Description</b>   | Failed to conduct effective manual or automatic inventory control procedures for the UST system at the Facility. |                           |                                    |            |
|                                |  |                           | <b>Base Penalty</b>                | \$10,000   |

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

|    |                |       |          |         |       |
|----|----------------|-------|----------|---------|-------|
| OR | <b>Harm</b>    |       |          | Percent |       |
|    | <b>Release</b> | Major | Moderate |         | Minor |
|    | Actual         |       |          |         |       |
|    | Potential      | x     |          |         | 25%   |

>> **Programmatic Matrix**

|   |                      |       |          |       |         |
|---|----------------------|-------|----------|-------|---------|
| Matrix Notes  | <b>Falsification</b> | Major | Moderate | Minor | Percent |
|   |                      |       |          |       |         |
| Failing to conduct inventory control for all USTs could expose human health or the environment 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

|                                |              |                      |
|--------------------------------|--------------|----------------------|
| mark only one<br>use a small x | daily        | <input type="text"/> |
|                                | monthly      | <input type="text"/> |
|                                | quarterly    | x                    |
|                                | semiannual   | <input type="text"/> |
|                                | annual       | <input type="text"/> |
|                                | single event | <input type="text"/> |

**Violation Base Penalty** \$2,500

One quarterly event is recommended based on documentation of the violation during the April 14, 2005 investigation, to the June 17, 2005 date of compliance.

|   |  |
|---|--|
| <b>Economic Benefit (EB) for this violation</b>   | <b>Statutory Limit Test</b>  |
| Estimated EB Amount <input type="text" value="\$1"/>  | Violation Final Penalty Total <input type="text" value="\$2,500"/> |
| <b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,500"/> |  |

### Economic Benefit Worksheet

**Respondent:** Kuang Phou dba Ken's Minit Market 3  
**Case ID No.:** 25953  
**Reg. Ent. Reference No.:** RN102964624  
**Media [Statute]:** Petroleum Storage Tank  
**Violation No.:** 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

| Delayed Costs            |  |  |  |     |     |     |     |
|--------------------------|--|--|--|-----|-----|-----|-----|
| Equipment                |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Buildings                |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)        |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Land                     |  |  |  | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System    |  |  |  | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling        |  |  |  | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal     |  |  |  | 0.0 | \$0 | n/a | \$0 |
| Permit Costs             |  |  |  | 0.0 | \$0 | n/a | \$0 |
| Other (as needed)        |  |  |  | 0.0 | \$0 | n/a | \$0 |
| Notes for DELAYED costs  |  |  |  |     |     |     |     |

| Avoided Costs  |       |             |             |     |     |     |     |
|--|-------|-------------|-------------|-----|-----|-----|-----|
| ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)   |       |             |             |     |     |     |     |
| Disposal   |       |             |             | 0.0 | \$0 | \$0 | \$0 |
| Personnel  |       |             |             | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling  | \$100 | 14-Jun-2005 | 17-Jun-2005 | 0.0 | \$0 | \$1 | \$1 |
| 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  |       |             |             |     |     |     |     |
| Estimated cost to conduct proper inventory control procedures. Date Required is the date of the investigation. Final Date is the date of compliance. |       |             |             |     |     |     |     |

Approx. Cost of Compliance \$100

**TOTAL** \$1

## Compliance History

|   |  |                                       |   |
|---|--|---------------------------------------|---|
| Customer/Respondent/Owner-Operator:           | CN602731721    PHOU, KUANG             | Classification: AVERAGE               | Rating: 3.01                              |
| Regulated Entity:                             | RN102964624    KENS MINIT MARKET 3     | Classification: AVERAGE<br>BY DEFAULT | Site Rating: 3.01                         |
| ID Number(s):                                 | PETROLEUM STORAGE TANK    REGISTRATION |                                       | 27911                                     |
| Location:                                     | 2500 SOUTH ST, NACOGDOCHES, TX, 75964  |                                       | Rating Date: 9/1/2004 Repeat Violator: NO |
| TCEQ Region:                                  | REGION 10 - BEAUMONT                   |                                       |   |
| Date Compliance History Prepared:             | July 21, 2005                          |                                       |   |
| Agency Decision Requiring Compliance History: | Enforcement                            |                                       |   |
| Compliance Period:                            | June 24, 2000 to June 24, 2005         |                                       |   |

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

Name: Melissa Keller Phone: 512-239-1768

### Site Compliance History Components

- |  |                                  |
|--|----------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes                              |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | Yes                              |
| 3. If Yes, who is the current owner?   | <u>N/A</u>                       |
| 4. If Yes, who was/were the prior owner(s)?  | <u>Ken's Minit Markets, Inc.</u> |
| 5. When did the change(s) in ownership occur?  | <u>06/30/2004</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 06/08/2005 (377910)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- 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  
AGAINST KUANG PHOU DBA  
KEN'S MINIT MARKET 3;  
TCEQ PST FACILITY ID NO. 27911  
RN102964624

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2005-1053-PST-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kuang Phou dba Ken's Minit Market 3 ("Phou") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Phou appear before the Commission and together stipulate that:

1. Phou operates a convenience store with retail sales of gasoline located at 2500 South Street in Nacogdoches, Nacogdoches County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Phou agree that the Commission has jurisdiction to enter this Agreed Order, and that Phou is subject to the Commission's jurisdiction.
4. Phou received notice of the violations alleged in Section II ("Allegations") on or about June 13, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Phou of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of three thousand five hundred dollars (\$3,500.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Phou has paid three thousand five hundred dollars (\$3,500.00) of the administrative penalty.
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 Phou have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Phou has not complied with one or more of the terms or conditions of this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable, and if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

Phou is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.8(c)(5)(C) by failing to ensure that a legible tag, label, or marking with the tank number was permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form.
2. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for the UST system at the Facility.

## **III. DENIALS**

Phou generally denies the allegations in Section II.

## **IV. ORDER**

1. It is, therefore, ordered by the TCEQ that Phou pay an administrative penalty as set forth in Section I, Paragraph six above. The payment of this administrative penalty and Phou's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering requiring corrective action or penalties for violations which are

**Kuang Phou dba Ken's Minit Market 3**  
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not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Kuang Phou dba Ken's Minit Market 3, Docket No. 2005-1053-PST-E" to:

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

2. Phou shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of the Commission Order, Phou shall:
    - i. ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).
    - ii. begin conducting effective manual or automatic inventory control procedures for the UST system at the Facility in accordance with 30 TEX. ADMIN CODE § 334.48(c).
  - b. Within 45 days after the effective date of the Commission Order, Phou shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.i-ii.

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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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:

Keith Anderson, Manager Waste Section  
Beaumont Regional Office, R-10  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon Phou. Phou is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Phou 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, Phou's failure to comply is not a violation of this Agreed Order. Phou shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Phou shall notify the Executive Director within seven days after Phou becomes aware of the 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 Phou shall be made in writing to the Executive Director. Extensions are not effective until Phou 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 Phou 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's, or of a rule adopted or an order or permit issued by the Commission under such a statute.

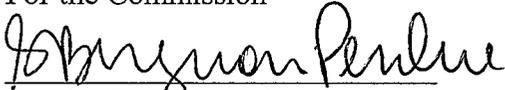
**Kuang Phou dba Ken's Minit Market 3**  
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7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
  
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T Code § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Phou, or three days after the date on which the Commission mails notice of the Order to Phou, 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

6/4/07

Date

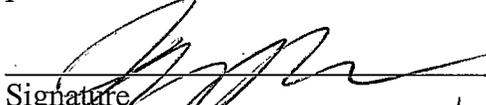
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provision, 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

  
KUANG PHOU

Name (Printed or typed)

Authorized representative of

Kuang Phou dba Ken's Minit Market 3

Date

4-15-06  
MANAGER

Title