

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-1128-PST-E TCEQ ID: RN102060803 CASE NO.: 26032
RESPONDENT NAME: JOEY NGUYEN DBA STOP & SHOP

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 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: 5037 Wilbarger Street, Fort Worth, 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 October 6, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Air Enforcement Section, MC 219, (512) 239-2134 TCEQ Regional Contact: Mr. Sam Barrett, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5903 Respondent: Mr. Joey Nguyen, Operator, Stop & Shop, 5037 Wilbarger Street, Forth Worth, Texas 76119 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 of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 27, 2005</p> <p>Date of NOE Relating to this Case: August 3, 2005</p> <p>Background Facts:</p> <p>The EDPRP was filed January 18, 2006. The Respondent agreed to settle, but failed to sign the final, corrected version of the Agreed Order. An EDFARP was filed on July 2, 2008, to remove the high performer credit from the PCW. The US Postal Service returned the EDFARP sent via certified mail as "unclaimed." The first class mail has not been returned. The Respondent has failed to file an answer or request a hearing.</p> <p>PST:</p> <p>1. Failed to maintain for review a copy of the Station's CARB Executive Order, Stage II facility maintenance records, Stage II employee training records, and a record of daily inspections conducted at the Station [30 TEX. ADMIN. CODE § 115.246(1), (3), (4) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2. Failed to maintain the Stage II vapor recovery system in proper operating condition as specified by CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, and failed to prevent the tampering with the Stage II vapor recovery [30 TEX. ADMIN. CODE § 115.242(3)(A) and 115.242(8) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3. Failed to have a submerged fill pipe that extends from the top of the tank to have a maximum clearance of six inches from the bottom</p>	<p>Total Assessed: \$5,000</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$5,000</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 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 Provisions:</p> <p>1. The Respondent's UST delivery certificate is revoked immediately upon the effective date of this Order. The Respondent may submit an application for a new delivery certificate only after the respondent has complied with all of the requirements of this Order.</p> <p>2. Within 10 days, the Respondent shall send its delivery certificate to the TCEQ.</p> <p>Corrective Action Taken:</p> <p>Respondent has implemented the following corrective measures at the Station:</p> <p>1. On September 29, 2005, Respondent began maintaining the Stage II vapor recovery system in proper operating condition, and was maintaining all Stage II records;</p> <p>2. On May 26, 2005, Respondent installed submerged fill pipes that extend from the top of the tanks and have a maximum clearance of six inches from the bottom as required; and</p> <p>3. On May 26, 2005, all required Stage II testing was completed.</p>

3. Failed to have a submerged fill pipe that extends from the top of the tank to have a maximum clearance of six inches from the bottom [30 TEX. ADMIN. CODE § 115.222(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

4. Failed to verify proper operation of the Stage II equipment at least once every 12 months, and failed to test the vapor space manifold and the dynamic back pressure at least once every 36 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	13-Jun-2005	Screening	21-Jun-2005	EPA Due	
	PCW	28-Jun-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Joey Nguyen dba Stop & Shop
Reg. Ent. Ref. No.	RN102060803
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	26032	No. of Violations	4
Docket No.	2005-1128-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Suzanne Walrath
Multi-Media		EC's Team	Enforcement Team 3
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 -10% Enhancement Subtotals 2, 3, & 7

Notes

Culpability No 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="\$50"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$1,600"/>	

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE 11% Enhancement 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 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 21-Jun-2005 **Docket No.** 2005-1128-PST-E **PCW**
Respondent Joey Nguyen dba Stop & Shop *Policy Revision 2 (September 2002)*
Case ID No. 26032 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102060803
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Suzanne Walrath

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 21-Jun-2005

Docket No. 2005-1128-PST-E

PCW

Respondent Joey Nguyen dba Stop & Shop

Policy Revision 2 (September 2002)

Case ID No. 26032

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102060803

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Suzanne Walrath

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

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 **Joey Nguyen dba Stop & Shop**
 Case ID No. **26032**
 Reg. Ent. Reference No. **RN102060803**
 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	\$500	27-Apr-2005	29-Sep-2005	0.4	\$11	n/a	\$11
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 implement a record keeping system. Date Required is the investigation date. Final Date is the date compliance documentation was submitted.

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 \$500 TOTAL \$11

Screening Date 21-Jun-2005

Docket No. 2005-1128-PST-E

PCW

Respondent Joey Nguyen dba Stop & Shop

Policy Revision 2 (September 2002)

Case ID No. 26032

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102060803

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Suzanne Walrath

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Failure to maintain the Stage II vapor recovery system in proper operating condition as specified by CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, and failure to prevent the tampering with the Stage II vapor recovery system that would impair the operation or effectiveness of the system. Specifically, the system failed to have swivel adapters to prevent the loosening/over-tightening for each Stage I fill and vapor recovery adaptor, and the dust cap gaskets on the Super and Regular unleaded fill pipes were missing. Also, the breakaway at dispenser no. 3 was installed upside down.

Base Penalty

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

		Harm			
		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
Matrix Notes	Failure to have the proper devices to prevent the loosening/over-tightening of the Stage I fill and vapor recovery adaptors, and failure to have breakaways installed in the correct flow direction, may result in the release of a significant amount of product/product vapors which would not exceed protective levels.					

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	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

One quarterly event is recommended based on documentation of the violation from the April 27, 2005 investigation date to the May 24, 2005 compliance date.

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 Joey Nguyen dba Stop & Shop
Case ID No. 26032
Reg. Ent. Reference No. RN102060803
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	\$150	27-Apr-2005	24-May-2005	0.1	\$0	\$1	\$1
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 to install devices to prevent the loosening/over-tightening of the Stage I fill and vapor recovery adaptors, install dust cap gaskets on the Super and Regular unleaded fill pipes, and to have the breakaways installed in the correct flow direction. Date Required is the date of the investigation. Final Date is the compliance date.

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 \$150 **TOTAL** \$1

Screening Date 21-Jun-2005	Docket No. 2005-1128-PST-E	PCW
Respondent Joey Nguyen dba Stop & Shop	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 26032	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN102060803		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Suzanne Walrath		
Violation Number	3	
Primary Rule Cite(s)	30 Tex. Admin. Code § 115.222(1)	
Secondary Rule Cite(s)	Tex. Health & Safety Code § 382.085(b)	
Violation Description	Failure to have a submerged fill pipe that extends from the top of the tank to have a maximum clearance of six inches from the bottom. Specifically, the super unleaded fill pipe was eight inches off the tank bottom, and regular unleaded was nine inches off the tank bottom.	
Base Penalty		\$10,000

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

Harm				
Release	Major	Moderate	Minor	
Actual				Percent <input style="width: 50px;" type="text" value="5%"/>
Potential			x	

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	
				Percent <input style="width: 50px;" type="text"/>

Matrix Notes Failure to have a submerged fill pipe with the correct maximum clearance, could expose the environment to pollutants which would not exceed protective levels.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

One single event is recommended based on documentation of the violation during the April 27, 2005 investigation.

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 **Joey Nguyen dba Stop & Shop**
 Case ID No. **26032**
 Reg. Ent. Reference No. **RN102060803**
 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	\$200	27-Apr-2005	24-May-2005	0.1	\$0	\$1	\$1
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 to install submerged fill pipes with the correct maximum clearance. Date Required is the date of the investigation. Final Date is the compliance date.

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 \$200 TOTAL \$1

Screening Date 21-Jun-2005 **Docket No.** 2005-1128-PST-E **PCW**

Respondent Joey Nguyen dba Stop & Shop *Policy Revision 2 (September 2002)*

Case ID No. 26032 *PCW Revision May 19, 2005*

Reg. Ent. Reference No. RN102060803

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Suzanne Walrath

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

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

Violation Base Penalty

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent **Joey Nguyen dba Stop & Shop**
 Case ID No. **26032**
 Reg. Ent. Reference No. **RN102060803**
 Media [Statute] **Petroleum Storage Tank**
 Violation No. **4**

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)	\$750	27-Apr-2004	27-Apr-2005	1.0	\$38	n/a	\$38

Notes for DELAYED costs: Estimated cost to verify proper operation of the Stage II equipment. Date Required is one year prior to the investigation date.

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 **\$750** TOTAL **\$38**

Compliance History

Customer/Respondent/Owner-Operator: CN602686388 NGUYEN, JOEY Classification: HIGH Rating: 0.000
Regulated Entity: RN102060803 STOP & SHOP Classification: HIGH Site Rating: 0.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 59369
REGISTRATION
Location: 5037 WILBARGER ST, FORT WORTH, TX, 76119 Rating Date: 9/1/04 Repeat Violator: NO
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: June 17, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 17, 2000 to June 17, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Kent Heath Phone: (512) 239-4575

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

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

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 06/08/2005 (379699)

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

I
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JOEY NGUYEN DBA STOP &
SHOP;
RN102060803**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2005-1128-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382 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 Joey Nguyen dba Stop & Shop ("Joey Nguyen").

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

FINDINGS OF FACT

1. Joey Nguyen operates a convenience store with retail sales of gasoline located at 5037 Wilbarger Street in Fort Worth, Tarrant County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation conducted on April 27, 2005, a TCEQ Dallas/ Fort Worth Regional Office investigator documented that Joey Nguyen:
 - a. Failed to maintain for review a copy of the Station's CARB Executive Order, Stage II facility maintenance records, Stage II employee training records, and a record of daily inspections conducted at the Station;
 - b. Failed to maintain the Stage II vapor recovery system in proper operating condition as specified by CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, and failed to prevent the tampering with the Stage II vapor recovery. Specifically, the system failed to have swivel adapters to prevent the loosening/over-tightening for each Stage I fill and vapor recovery adaptor, and the

dust cap gaskets on the Super and Regular unleaded fill pipes were missing. Also, the breakaway at dispenser no. 3 was installed upside down;

- c. Failed to have a submerged fill pipe that extends from the top of the tank to have a maximum clearance of six inches from the bottom. Specifically, the super unleaded fill pipe was eight inches off the tank bottom, and regular unleaded was nine inches off the tank bottom; and
 - d. Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual pressure decay, flow rate determination, and volume-to-liquid ("V/L") or air-to-liquid ("A/L") ratio tests had not been conducted. Also, the vapor space manifold and the dynamic back pressure tests had not been conducted at least once every 36 months.
4. Joey Nguyen received notice of the violations on or about August 8, 2005.
 5. The Executive Director recognizes that Joey Nguyen has implemented the following corrective measures at the Station:
 - a. On September 29, 2005, Joey Nguyen began maintaining the Stage II vapor recovery system in proper operating condition, and was maintaining all Stage II records;
 - b. On May 26, 2005, Joey Nguyen installed submerged fill pipes that extend from the top of the tanks and have a maximum clearance of six inches from the bottom as required; and
 - c. On May 26, 2005, all required Stage II testing was completed.
 6. 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 Joey Nguyen dba Stop & Shop" (the "EDPRP") in the TCEQ Chief Clerk's office on January 18, 2006.
 7. By letter dated January 18, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Joey Nguyen with notice of the EDPRP. According to the return receipt "green card," Joey Nguyen received notice of the EDPRP on January 20, 2006, as evidenced by the signature on the card.

8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Joey Nguyen dba Stop & Shop" (the "EDFARP") in the TCEQ Chief Clerk's office on July 2, 2008.
9. By letter dated July 2, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Joey Nguyen with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Joey Nguyen received notice of the EDFARP.
10. More than 20 days have elapsed since Joey Nguyen received notice of the EDPRP and EDFARP, provided by the Executive Director. Joey Nguyen failed to file an answer to either the EDPRP or the EDFARP, 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, Joey Nguyen is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Joey Nguyen failed to maintain for review a copy of the Station's CARB Executive Order, Stage II facility maintenance records, Stage II employee training records, and a record of daily inspections conducted at the Station, in violation of 30 TEX. ADMIN. CODE § 115.246(1), (3), (4) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., Joey Nguyen failed to maintain the Stage II vapor recovery system in proper operating condition as specified by CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, and failed to prevent the tampering with the Stage II vapor recovery in violation of 30 TEX. ADMIN. CODE § 115.242(3)(A) and 115.242(8) and TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Finding of Fact No. 3.c. Joey Nguyen failed to have a submerged fill pipe that extends from the top of the tank to have a maximum clearance of six inches from the bottom, in violation of 30 TEX. ADMIN. CODE § 115.222(1) and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Finding of Fact No. 3.d., Joey Nguyen failed to verify proper operation of the Stage II equipment at least once every 12 months. Also, the vapor space manifold and

the dynamic back pressure tests had not been conducted at least once every 36 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b).

6. As evidenced by Finding of Fact Nos. 6 and 7 the Executive Director timely served Joey Nguyen with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact Nos. 8 and 9 the Executive Director timely served Joey Nguyen with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
8. As evidenced by Finding of Fact No. 10, Joey Nguyen failed to file a timely answer to either the EDPRP or the EDFARP, 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 Joey Nguyen and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051 the Commission has the authority to assess an administrative penalty against Joey Nguyen for violations of the Texas Water Code and 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.
10. An administrative penalty in the amount of five thousand dollars (\$5,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. 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.
12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Joey Nguyen's UST delivery certificate if the Commission finds that good cause exists.
13. Good cause for revocation of Joey Nguyen's UST delivery certificate exists as justified by Findings of Fact Nos. 2, 3, 6, 7, 8, 9 and 10 and Conclusions of Law Nos. 2, 3, 4, 5, 6, 7 and 8.

ORDERING PROVISIONS

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

1. Joey Nguyen is assessed an administrative penalty in the amount of five thousand dollars (\$5,000.00) for violations of the Texas Water Code and Health and Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Joey 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: Joey Nguyen dba Stop & Shop; Docket No. 2005-1128-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. Joey Nguyen's UST delivery certificate is revoked immediately upon the effective date of this Order. Joey Nguyen may submit an application for a new delivery certificate only after Joey Nguyen has complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Joey Nguyen shall send his UST delivery certificate to:

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

4. All relief not expressly granted in this Order is denied.

5. The provisions of this Order shall apply to and be binding upon Joey Nguyen. Joey Nguyen is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
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 Joey Nguyen shall be made in writing to the Executive Director. Extensions are not effective until Joey 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 Joey Nguyen if the Executive Director determines that Joey 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.

Joey Nguyen dba Stop & Shop
Docket No. 2005-1128-PST-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jacquelyn Boutwell. 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, 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 Joey Nguyen dba Stop & Shop” (the “EDPRP”) was filed with the Office of the Chief Clerk on January 18, 2006.

The EDPRP was mailed to Joey Nguyen at his last known address on January 18, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Joey Nguyen received notice of the EDPRP on January 20, 2006, as evidenced by the signature on the card.

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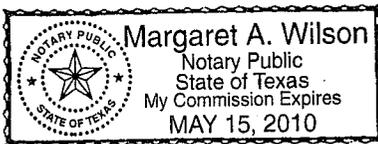
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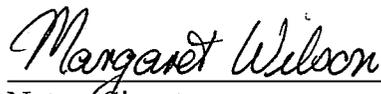
More than 20 days have elapsed since Joey Nguyen received notice of the EDPRP and EDFARP. Joey Nguyen failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.”


Jacquelyn Boutwell, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, 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 5th day of AUGUST, A.D., 2008.





Notary Signature