

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1374-PST-E TCEQ ID: RN102653201 CASE NO.: 36438
RESPONDENT NAME: TUAN NGUYEN DBA AM FOOD MART

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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
<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> USED OIL	<input type="checkbox"/> WATER RIGHTS

SITE WHERE VIOLATION(S) OCCURRED: 7530 Harrisburg Boulevard, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on May 18, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Anna M. Treadwell, Litigation Division, MC 175, (512) 239-0974
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577

TCEQ Regional Contact: Ms. Nicole Bealle Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Mr. Tuan Nguyen, AM Food Mart, 7530 Harrisburg Boulevard, Houston, Texas 77012

Respondent's Attorney: Not represented by counsel on this enforcement matter.

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 Investigation Relating to this Case: August 4, 2008</p> <p>Date of NOE Relating to this Case: August 12, 2008</p> <p>Background Facts: The Respondent signed an Agreed Order on February 13, 2009.</p> <p>Current Compliance Status: No outstanding technical requirements. The Respondent's delivery certificate expires in February 2010.</p> <p>PST:</p> <p>1. Failed to verify proper operation of the Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) 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 the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$3,937</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 Paid/Due to General Revenue: \$122/\$3,815</p> <p>The Respondent paid \$122 of the administrative penalty. The remaining amount of \$3,815 shall be payable in 35 monthly payments of \$109 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that Respondent implemented the following corrective measures at the Station:</p> <p>1. Removed the blockage from the line in the Stage II vapor recovery system on August 13, 2008.</p> <p>2. Conducted and passed Annual State II testing on August 13, 2008.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	20-Aug-2008	Screening	22-Aug-2008	EPA Due	
	PCW	15-Jan-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Tuan Nguyen dba AM Food Mart		
Reg. Ent. Ref. No.	RN102653201		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36438	No. of Violations	2
Docket No.	2008-1374-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rajesh Acharya
		EC's Team	Enforcement Team 6
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 Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

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

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

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 22-Aug-2008

Docket No. 2008-1374-PST-E

PCW

Respondent Tuan Nguyen dba AM Food Mart

Policy Revision 2 (September 2002)

Case ID No. 36438

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102653201

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	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 submitted</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%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 22-Aug-2008	Docket No. 2008-1374-PST-E	PCW
Respondent Tuan Nguyen dba AM Food Mart	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 36438	<i>PCW Revision June 12, 2008</i>	
Reg. Ent. Reference No. RN102653201		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Rajesh Acharya		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)"/>	
Violation Description	<input type="text" value="Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment was not conducted."/>	
Base Penalty		<input type="text" value="\$10,000"/>
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Release Major Moderate Minor	
	Actual	<input type="text"/>
Potential	<input type="text" value="x"/>	Percent <input type="text" value="25%"/>
>> Programmatic Matrix		
	Falsification Major Moderate Minor	
	<input type="text"/>	Percent <input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>	
Adjustment		<input type="text" value="\$7,500"/>
		<input type="text" value="\$2,500"/>
Violation Events		
Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="365"/> Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text" value="x"/>
	single event	<input type="text"/>
		Violation Base Penalty <input type="text" value="\$2,500"/>
<input type="text" value="One annual event is recommended for the 12-month period preceding the August 4, 2008 investigation."/>		
Good Faith Efforts to Comply		<input type="text" value="10.0%"/> Reduction <input type="text" value="\$250"/>
	Before NOV NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	
Ordinary	<input type="text" value="x"/>	
N/A	<input type="text"/>	<i>(mark with x)</i>
Notes	<input type="text" value="The Respondent came into compliance on August 13, 2008."/>	
Violation Subtotal		<input type="text" value="\$2,250"/>
Economic Benefit (EB) for this violation		Statutory Limit Test
Estimated EB Amount	<input type="text" value="\$612"/>	Violation Final Penalty Total <input type="text" value="\$2,812"/>
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,812"/>

Economic Benefit Worksheet

Respondent: Tuan Nguyen dba AM Food Mart

Case ID No.: 36438

Reg. Ent. Reference No.: RN102653201

Media: 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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$558	4-Aug-2007	13-Aug-2008	1.95	\$54	\$558	\$612
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual cost for conducting annual test to verify proper operation of the Stage II equipment based on submittal of receipt. Date Required is one year prior to the investigation date. Final Date is the date of compliance.

Approx. Cost of Compliance

\$558

TOTAL

\$612

Screening Date 22-Aug-2008	Docket No. 2008-1374-PST-E	PCW												
Respondent Tuan Nguyen dba AM Food Mart	<small>Policy Revision 2 (September 2002)</small>													
Case ID No. 36438	<small>PCW Revision June 12, 2008</small>													
Reg. Ent. Reference No. RN102653201														
Media [Statute] Petroleum Storage Tank														
Enf. Coordinator Rajesh Acharya														
Violation Number <input type="text" value="2"/>														
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 115.242(3) and Tex. Health & Safety Code § 382.085(b)"/>													
Violation Description	<input type="text" value="Failed to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, Stage II tests failed due to a blockage in the system."/>													
Base Penalty		<input type="text" value="\$10,000"/>												
>> Environmental, Property and Human Health Matrix														
OR	Harm													
	Major Moderate Minor													
Actual	<input type="text"/>	<input type="text"/>												
Potential	<input type="text" value="x"/>	<input type="text"/>												
Percent		<input type="text" value="10%"/>												
>> Programmatic Matrix														
Falsification	Major	Moderate												
Minor	<input type="text"/>	<input type="text"/>												
Percent		<input type="text" value="0%"/>												
Matrix Notes	<input type="text" value="Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation."/>													
Adjustment		<input type="text" value="\$9,000"/>												
		<input type="text" value="\$1,000"/>												
Violation Events														
Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="18"/> Number of violation days												
<small>mark only one with an x</small>	<table border="1" style="border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text" value="x"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text" value="x"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	Violation Base Penalty
daily	<input type="text"/>													
monthly	<input type="text"/>													
quarterly	<input type="text" value="x"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input type="text"/>													
		<input type="text" value="\$1,000"/>												
<input type="text" value="One quarterly event is recommended based on documentation of the violation during the August 4, 2008 investigation to the August 22, 2008 screening date."/>														
Good Faith Efforts to Comply														
10.0% Reduction		<input type="text" value="\$100"/>												
	Before NOV NOV to EDPRP/Settlement Offer													
Extraordinary	<input type="text"/>	<input type="text"/>												
Ordinary	<input type="text"/>	<input type="text" value="x"/>												
N/A	<small>(mark with x)</small>													
Notes	<input type="text" value="The Respondent came into compliance on August 13, 2008."/>													
Violation Subtotal		<input type="text" value="\$900"/>												
Economic Benefit (EB) for this violation														
Statutory Limit Test														
Estimated EB Amount	<input type="text" value="\$2"/>	Violation Final Penalty Total												
		<input type="text" value="\$1,125"/>												
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$1,125"/>												

Economic Benefit Worksheet

Respondent Tuan Nguyen dba AM Food Mart

Case ID No. 36438

Reg. Ent. Reference No. RN102653201

Media 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	\$1,000	4-Aug-2008	13-Aug-2008	0.02	\$0	\$2	\$2
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to clear the system and retest. Date Required is the date of investigation. Final Date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$2

Compliance History

Customer/Respondent/Owner-Operator:	CN601349780 Tuan Nguyen	Classification: AVERAGE	Rating: 1.00
Regulated Entity:	RN102653201 AM FOOD MART	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	65273
Location:	7530 HARRISBURG BLVD, HOUSTON, TX, 77012	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	August 27, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 27, 2003 to August 27, 2008		

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

Name: Rajesh Acharya Phone: (512) 239-0577

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.)
N/A

1	10/28/2004	(291066)
2	06/06/2005	(392855)
3	10/30/2006	(517492)
4	08/12/2008	(688782)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 Date: 06/06/2005 (392855)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)
 Description: FAILURE TO MAINTAIN THE STAGE II VAPOR RECOVERY SYSTEM IN PROPER OPERATING CONDITION, AS SPECIFIED.
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TUAN NGUYEN
DBA AM FOOD MART
RN102653201

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1374-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 Tuan Nguyen dba AM Food Mart ("Mr. Nguyen") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Nguyen, appear before the Commission and together stipulate that:

1. Mr. Nguyen operates a convenience store with retail sales of gasoline located at 7530 Harrisburg Boulevard, Houston, Harris County, Texas (the "Station").
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. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Mr. Nguyen agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Nguyen is subject to the Commission's jurisdiction.
4. Mr. Nguyen received notice of the violations alleged in Section II ("Allegations") on or about August 17, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Nguyen of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of three thousand nine hundred thirty-seven dollars (\$3,937.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Nguyen paid one hundred twenty-two dollars (\$122.00) of the

administrative penalty. The remaining amount of three thousand eight hundred fifteen dollars (\$3,815.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred nine dollars (\$109.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mr. Nguyen fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Mr. Nguyen's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Nguyen to timely and satisfactorily comply with all of the terms of this Agreed Order.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Nguyen agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Mr. Nguyen implemented the following corrective measures at the Station in response to this enforcement action:
 - a. Removed the blockage from the line in the Stage II vapor recovery system on August 13, 2008.
 - b. Conducted and passed Annual State II testing on August 13, 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Nguyen has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

During an investigation conducted on August 4, 2008, a TCEQ Local Program, University of Texas – Arlington Stage II Petroleum Storage Tank investigator documented that Mr. Nguyen violated:

1. 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment was not conducted.
2. 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, Stage II tests failed due to a blockage in the system

III. DENIALS

Mr. Nguyen generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Nguyen pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Mr. Nguyen’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 or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Tuan Nguyen dba AM Food Mart, Docket No. 2008-1374-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. The provisions of this Agreed Order shall apply to and be binding upon Mr. Nguyen.

3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Nguyen in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. 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.
5. 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 Mr. Nguyen, or three days after the date on which the Commission mails notice of the Order to Mr. Nguyen, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Tuan Nguyen dba AM Food Mart
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

6/17/2009

For the Executive Director

Date

I, the undersigned, 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 Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution

[Handwritten Signature]
Signature

2/13/09
Date

TUAN NGUYEN
Name (Printed or typed)
Tuan Nguyen dba AM Food Mart

OWNER
Title