

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1791-PST-E TCEQ ID: RN102241247 CASE NO.: 31441

**RESPONDENTS NAMES: TOM HUU NGUYEN AKA HUU TAM NGUYEN DBA SHOP-N-GO
SUPERETTE AND THUY NGA LE NGUYEN AKA THUY NGA LE DBA SHOP-N-GO SUPERETTE**

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 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

SITE WHERE VIOLATION(S) OCCURRED: 630 West Davis Street, Vidor, Orange County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No N/A

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired January 18, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629
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: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

Respondents: Ms. Thuy Nga Le Nguyen, 4941 Gulfway Drive, Port Arthur, TX 77642 and Mr. Tom Huu Nguyen, 4941 Gulfway Drive, Port Arthur, TX 77642

Respondents' 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 checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: August 25, 2004 and September 11, 2006</p> <p>Dates of NOEs Relating to this Case: January 13, 2005 and September 27, 2006</p> <p>Background Facts: The EDP RP was filed on July 3, 2008. The EDFARP was filed on February 6, 2009. The EDSARP was filed on May 1, 2009. The EDTARP was filed on October 2, 2009. Service of Tom Huu Nguyen and Thuy Nga Le Nguyen was achieved on October 3, 2009. The Respondents failed to file an answer.</p> <p>Current Compliance Status: The Respondents have not yet submitted documentation to certify compliance with the technical requirements.</p> <p>The Respondents' delivery certificate expired January 2005.</p> <p>PST:</p> <p>1. Failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and 37.815(b)].</p> <p>2. Failed to permanently remove service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE§ 334.47(a)(2)].</p> <p>3. Failed to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p>	<p>Initial Calculated Penalty: \$6,895</p> <p>Total Deferred: \$0 <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: \$3,150/\$3,745</p> <p>This is a Default Order; however, the Respondents have paid \$3,150 of the penalty. The remaining amount of \$3,745 shall be paid within 30 days.</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>Ordering Provisions:</p> <p>The Respondents shall undertake the following technical requirements:</p> <p>1. Within 30 days:</p> <p>a. Temporarily remove the petroleum USTs from service, in accordance with the following requirements:</p> <p>i. Install and implement a release detection method;</p> <p>ii. Install and implement a corrosion protection method; and</p> <p>iii. Demonstrate Financial Assurance for all USTs at the Facility;</p> <p>Or</p> <p>b. Permanently remove the petroleum USTs from service, in accordance with the following requirements:</p> <p>i. Ensure that the UST system has been emptied of all regulated substances; and</p> <p>ii. Permanently remove the UST system from service.</p> <p>2. Within 45 days:</p> <p>a. Submit registration to indicate the current operational status of the UST system; and</p> <p>b. Submit written certification demonstrating compliance.</p>

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 10, 2004

DATES	Assigned	18-Jan-2005	Screening	2-Feb-2005	Priority Due	19-Mar-2005	EPA Due	
	PCW	9-Nov-2009						

RESPONDENT/FACILITY INFORMATION	
Respondent	Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette
Reg. Ent. Ref. No.	RN102241247
Additional ID No(s)	Petroleum Storage Tank Facility ID No. 43106
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	31441	No. of Violations	1
Docket No.	2006-1791-PST-E	Order Type	1660 without deferral
Case Priority	3	Enf. Coordinator	Daniel O. Siringi
Media Program(s)	Petroleum Storage Tank	EC's Team	Enforcement Team 4
Multi-Media			
Admin. Penalty \$ Limit Minimum	\$ 0	Maximum	\$ 10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$ 3,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **5% Enhancement** **Subtotals 2, 3, & 7** \$ 150

Notes: The Respondent has one NOV with same or similar violations at this facility with the past five years.

Culpability **0% Enhancement** **Subtotal 4** \$ 0

Notes: The Respondent did not meet culpability criteria.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** \$ 0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes: The Respondent has not achieved compliance.

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

Total EB Amounts	\$ 2,048	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$ 1,950	

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$ 3,150

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** \$ 0

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

Notes:

Final Penalty Amount \$ 3,150

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$ 3,150

DEFERRAL **0% Reduction** **Adjustment** \$ 0

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.

PAYABLE PENALTY **\$ 3,150**

PCW 1

Screening Date	2-Feb-2005	Docket No.	2006-1791-PST-E	PCW
Respondent	Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette			
Case ID No.	31441	<i>PCW Revision December 10, 2004</i>		
Reg. Ent. Reference No.	RN102241247			
Additional ID No(s).	Petroleum Storage Tank Facility ID No. 43106			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Daniel O. Siringi			
Site Address	630 West Davis Loop, Vidor, Orange County			

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 (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	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)

Screening Date 2-Feb-2005

Docket No. 2006-1791-PST-E

PCW

Respondent Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette

Case ID No. 31441

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN102241247

Additional ID No(s). Petroleum Storage Tank Facility ID No. 43106

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Daniel O. Siringi

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Secondary Rule Cite(s)

Violation Description Failure to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs.

Base Penalty \$ 10,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		x			Percent 10%

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

Adjustment -\$ 9,000

Base Penalty Subtotal \$ 1,000

Violation Events

Number of Violation Events 3

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

Violation Base Penalty \$ 3,000

Three single events (one per tank) are recommended based upon the record review conducted on August 25, 2004.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$ 2,048

Violation Final Penalty Total \$ 3,150

This violation Final Assessed Penalty (adjusted for limits) \$ 3,150

Economic Benefit Worksheet

Respondent Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette

Case ID No. 31441

Reg. Ent. Reference No. RN102241247

Additional ID No(s). Petroleum Storage Tank Facility ID No. 43106

Media [Statute] Petroleum Storage Tank

Violation No. 1

Percent Interest 5.0
Years of Depreciation 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							

Item Description	Cost	Date	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$1,950.00	4-Aug-2002	4-Aug-2003	1.0	\$98	\$1,950	\$2,048
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs	Estimated cost to provide financial assurance for three petroleum USTs (\$650 per tank). Date required is one year prior to initial request. Final date is the initial request date.						

Approx. Cost of Compliance

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN603580689 Tom Huu Nguyen	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN102241247 SHOP-N-GO SUPERETTE	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	43106
Location:	630 W DAVIS STREET, VIDOR, TX, 77662	Rating Date: 9/1/04	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	January 29, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 29, 2000 to January 29, 2005		

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

Name: Daniel Siringi Phone: 409-899-8799

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 10/20/2003 (278014)
 - 2 01/13/2005 (292351)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: **10/20/2003** (278014)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
 - Description: Failure to provide acceptable financial assurance.
 - 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

CH 1A

Compliance History

Customer/Respondent/Owner-Operator:	CN601195944 Thuy Nga Le Nguyen	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN102241247 SHOP-N-GO SUPERETTE	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	43106
Location:	630 W DAVIS STREET, VIDOR, TX, 77662	Rating Date: 9/1/04	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	January 29, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 29, 2000 to January 29, 2005		

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

Name: Daniel Siringi Phone: 409-899-8799

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 10/20/2003 (278014)
 - 2 01/13/2005 (292351)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: **10/20/2003** (278014)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
30 TAC Chapter 37, SubChapter I 37.815(b)
 - Description: Failure to provide acceptable financial assurance.
 - 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

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned	2-Oct-2006	Screening	6-Oct-2006	EPA Due	
	PCW	9-Nov-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette
Reg. Ent. Ref. No.	RN102241247
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	31441	No. of Violations	2
Docket No.	2006-1791-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$ 0	Maximum	\$ 10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$ 3,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **7% Enhancement** **Subtotals 2, 3, & 7** **\$ 245**

Notes: Enhancement for one NOV with same or similar violations and one NOV without a same or similar violation.

Culpability **0% Enhancement** **Subtotal 4** **\$ 0**

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$ 0**

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes: The respondent does not meet the good faith criteria.

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

Total EB Amounts	\$ 5,951	<i>*Capped at the Total EB \$ Amount</i>
Approx. Cost of Compliance	\$ 10,100	

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$ 3,745**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** **\$ 0**

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

Notes:

Final Penalty Amount **\$ 3,745**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$ 3,745**

DEFERRAL **Adjustment** **\$ 0**

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

Notes: This is not an expedited case.

PAYABLE PENALTY **\$ 3,745**

PCW 2

Screening Date	38996	Docket No.	2006-1791-PST-E	PCW
Respondent	Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette			
Case ID No.	31441	<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No.	RN102241247			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Rajesh Acharya			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	<i>Enter Number Here</i>	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	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) 7%

>> Repeat Violator (Subtotal 3)

No **Adjustment Percentage (Subtotal 3)** 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer **Adjustment Percentage (Subtotal 7)** 0%

>> Compliance History Summary

Compliance History Notes Enhancement for one NOV with same or similar violations and one NOV without a same or similar violation.

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

Screening Date 6-Oct-2006

Docket No. 2006-1791-PST-E

PCW

Respondent Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette

Case ID No. 31441

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102241247

Additional ID No(s) 0

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code §334.47(a)(2)

Secondary Rule Cite(s)

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty \$ 10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	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 -\$ 7,500

Base Penalty Subtotal \$ 2,500

Violation Events

Number of Violation Events 1

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$ 2,500

One monthly event is recommended from the investigation date of September 11, 2006 to the screening date of October 6, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$ 5,947

Violation Final Penalty Total \$ 2,675

This violation Final Assessed Penalty (adjusted for limits) \$ 2,675

Economic Benefit Worksheet

Respondent Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen
 aka Thuy Nga Le dba Shop-N-Go Superette
Case ID No. 31441
Reg. Ent. Reference No. RN102241247
Media [Statute] Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>o commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$ 0	\$ 0	\$ 0
Buildings				0.0	\$ 0	\$ 0	\$ 0
Other (as needed)	\$ 10,000	22-Dec-1998	19-Jun-2007	8.5	\$ 283	\$ 5,664	\$ 5,947
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 permanently remove the UST system from service. Date Required is the date when the respondent was required to upgrade the UST system. Final Date is the estimated 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 \$ 10,000

TOTAL \$ 5,947

Screening Date 6-Oct-2006 **Docket No.** 2006-1791-PST-E **PCW**
Respondent Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette
Case ID No. 31441 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN102241247
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rajesh Acharya

Violation Number
Primary Rule Cite(s)
Secondary Rule Cite(s)
Violation Description

Base Penalty

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

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

<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 type="text"/>
	<i>single event</i>	<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 Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette

Case ID No. 31441

Reg. Ent. Reference No. RN102241247

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
No commas or \$							

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	11-Sep-2006	19-Jun-2007	0.8	\$ 4	n/a	\$ 4

Notes for DELAYED costs: Approximate cost to update UST registration. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$ 0	\$ 0	\$ 0
Personnel				0.0	\$ 0	\$ 0	\$ 0
Inspection/Reporting/Sampling				0.0	\$ 0	\$ 0	\$ 0
Supplies/equipment				0.0	\$ 0	\$ 0	\$ 0
Financial Assurance [2]				0.0	\$ 0	\$ 0	\$ 0
ONE-TIME avoided costs [3]				0.0	\$ 0	\$ 0	\$ 0
Other (as needed)				0.0	\$ 0	\$ 0	\$ 0

Notes for AVOIDED costs

Approx. Cost of Compliance \$ 100

TOTAL \$ 4

Compliance History

Customer/Respondent/Owner-Operator:	CN603580689 Tom Huu Nguyen	Classification: AVERAGE	Rating: 3.60
Regulated Entity:	RN102241247 SHOP-N-GO SUPERETTE	Classification: AVERAGE	Site Rating: 4.20
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	43106
Location:	630 W DAVIS STREET, VIDOR, TX, 77662	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	April 18, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 18, 2003 to April 18, 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 | 1 | 10/20/2003 | (278014) | |
| | 2 | 01/13/2005 | (292351) | |
| | 3 | 10/26/2005 | (432411) | |
| | 4 | 09/27/2006 | (512468) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | | |
|--------------|---|----------|-----------------|----------|
| Date: | 10/20/2003 | (278014) | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 37, SubChapter I 37.815(a) | | | |
| | 30 TAC Chapter 37, SubChapter I 37.815(b) | | | |
| Description: | Failure to provide acceptable financial assurance. | | | |
| | | | | |
| Date: | 12/14/2005 | (438970) | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.54(d)(2) | | | |
| Description: | Failure to empty tanks to less than 2.5 centimeters of product. | | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.7(d)(3) | | | |
| Description: | Failure to amend UST registration information. | | | |

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to have tanks upgraded to meet all technical standards.

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

Compliance History

Customer/Respondent/Owner-Operator:	CN601195944 Thuy Nga Le Nguyen	Classification: AVERAGE	Rating: 3.60
Regulated Entity:	RN102241247 SHOP-N-GO SUPERETTE	Classification: AVERAGE	Site Rating: 4.20
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	43106
Location:	630 W DAVIS STREET, VIDOR, TX, 77662	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	April 18, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 18, 2003 to April 18, 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.)
- | | | | |
|---|------------|----------|--|
| 1 | 10/20/2003 | (278014) | |
| 2 | 01/13/2005 | (292351) | |
| 3 | 10/26/2005 | (432411) | |
| 4 | 09/27/2006 | (512468) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 10/20/2003 | (278014) | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 37, SubChapter I 37.815(a) | | |
| | 30 TAC Chapter 37, SubChapter I 37.815(b) | | |
| Description: | Failure to provide acceptable financial assurance. | | |
| | | | |
| Date: | 12/14/2005 | (438970) | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.54(d)(2) | | |
| Description: | Failure to empty tanks to less than 2.5 centimeters of product. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.7(d)(3) | | |
| Description: | Failure to amend UST registration information. | | |

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: Failure to have tanks upgraded to meet all technical standards.

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
TOM HUU NGUYEN AKA HUU
TAM NGUYEN DBA SHOP-N-GO
SUPERETTE AND THUY NGA LE
NGUYEN AKA THUY NGA LE
DBA SHOP-N-GO SUPERETTE;
RN102241247

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2006-1791-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Third Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondents and revocation of the respondents' fuel delivery certificate. The respondents made the subject of this Order are Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette ("Mr. and Ms. Nguyen").

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

FINDINGS OF FACT

1. Mr. and Ms. Nguyen own a convenience store with retail sales of gasoline located at 630 West Davis Street, Vidor, Orange County, Texas (the "Facility").
2. Mr. and Ms. Nguyen's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. and Ms. Nguyen's USTs contain a regulated substance as defined in the rules of the Commission.
3. During a record review conducted on August 25, 2004, TCEQ staff documented that Mr. and Ms. Nguyen violated 30 TEX. ADMIN. CODE § 37.815(a) and 37.815(b) by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties

for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs.

4. During an investigation conducted on September 11, 2006, a TCEQ Beaumont Regional Office investigator documented that Mr. and Ms. Nguyen:
 - a. Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
 - b. Failed to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration was not updated to reflect the current out of service status of the USTs.
5. Mr. and Ms. Nguyen received notice of the violations on or about October 3, 2009.
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 and Requiring Certain Actions of Quoc Nguyen dba Shop-N-Go Superette" (the "EDPRP") in the TCEQ Chief Clerk's office on July 3, 2008.
7. By letter dated July 3, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Quoc Nguyen dba Shop-N-Go Superette ("Quoc Nguyen") with notice of the EDPRP. According to the return receipt "green card," Quoc Nguyen received notice of the EDPRP on July 5, 2008, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Quoc Nguyen received notice of the EDPRP, provided by the Executive Director. Quoc Nguyen failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
9. 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 and Requiring Certain Actions of Quoc Nguyen dba Shop-N-Go Superette" (the "EDFARP") in the TCEQ Chief Clerk's office on February 6, 2009.

10. By letter dated February 6, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Quoc Nguyen with notice of the EDFARP. According to the return receipt "green card," Quoc Nguyen received notice of the EDFARP on February 9, 2009, as evidenced by the signature on the card.
11. More than 20 days have elapsed since Quoc Nguyen received notice of the EDFARP, provided by the Executive Director. Quoc Nguyen failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.
12. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Quoc Nguyen aka Dinh Q. Nguyen dba Shop-N-Go Superette, Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette, and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette" (the "EDSARP") in the TCEQ Chief Clerk's office on May 1, 2009.
13. By letter dated May 1, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Quoc Nguyen with notice of the EDSARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Quoc Nguyen received notice of the EDSARP. Service of Mr. and Ms. Nguyen was unsuccessful.
14. More than 20 days have elapsed since Quoc Nguyen received notice of the EDSARP, provided by the Executive Director. Quoc Nguyen failed to file an answer to the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.
15. The Executive Director filed the "Executive Director's Third Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Quoc Nguyen aka Dinh Q. Nguyen dba Shop-N-Go Superette, Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette, and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette" (the "EDTARP") in the TCEQ Chief Clerk's office on October 2, 2009.
16. By letter dated October 2, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Quoc Nguyen and Mr. and Ms. Nguyen with notice of the EDTARP. According to the return receipt "green card," Quoc Nguyen received notice of the EDTARP on October 8, 2009, as evidenced by the signature on the card. According to the return receipt "green cards," Mr. and Ms. Nguyen received notice of the EDTARP on October 3, 2009, as evidenced by the signatures on the cards.

17. More than 20 days have elapsed since Quoc Nguyen and Mr. and Ms. Nguyen received notice of the EDTARP, provided by the Executive Director. Quoc Nguyen and Mr. and Ms. Nguyen failed to file an answer to the EDTARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. and Ms. Nguyen are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. and Ms. Nguyen failed to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE §§ 37.815(a) and 37.815(b).
3. As evidenced by Finding of Fact No. 4.a., Mr. and Ms. Nguyen failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
4. As evidenced by Finding of Fact No. 4.b., Mr. and Ms. Nguyen failed to provide amended registration regarding USTs within 30 days from the date of occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
5. As evidenced by Finding of Fact Nos. 15 and 16, the Executive Director timely served Quoc Nguyen and Mr. and Ms. Nguyen with proper notice of the EDTARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 17, Quoc Nguyen and Mr. and Ms. Nguyen failed to file a timely answer to the EDTARP, 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 Quoc Nguyen and Mr. and Ms. Nguyen and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Quoc Nguyen and Mr. and Ms. Nguyen for violations of the Texas Water 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.

8. An administrative penalty in the amount of six thousand eight hundred ninety-five dollars (\$6,895.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Executive Director recognizes that Mr. and Ms. Nguyen have paid three thousand one hundred fifty dollars of the administrative penalty (\$3,150.00). The remaining amount of three thousand seven hundred forty-five dollars (\$3,745.00) of the administrative penalty shall be paid in full within 30 days after the effective date of the Commission Order.
9. 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.
10. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Mr. and Ms. Nguyen's UST fuel delivery certificate if the Commission finds that good cause exists.
11. Good cause for revocation of Mr. and Ms. Nguyen's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2-4 and 15-17 and Conclusions of Law Nos. 2 through 6.

ORDERING PROVISIONS

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

1. It is, therefore, ordered by the TCEQ that Mr. and Ms. Nguyen pay an administrative penalty as set forth in Conclusions of Law, Paragraph 8. The payment of this administrative penalty and Mr. and Ms. 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: Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go-Superette; Docket No. 2006-1791-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. Mr. and Ms. Nguyen's UST delivery certificate is revoked immediately upon the effective date of this Order. Mr. and Ms. Nguyen may submit an application for a new delivery certificate only after Mr. and Ms. Nguyen have complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, Mr. and Ms. Nguyen shall send their UST fuel delivery certificate to:

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

4. Mr. and Ms. Nguyen shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of the Commission Order, Mr. and Ms. Nguyen shall complete either of the following:
 - i. Temporarily remove the petroleum USTs from service in accordance with the following requirements:
 1. Install and implement a release detection method, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 2. Install and implement a corrosion protection method, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
 3. Demonstrate Financial Assurance for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 37.815; or
 - ii. Permanently remove the petroleum USTs from service in accordance with the following requirements:

1. Ensure that the UST system has been emptied of all regulated substances, in accordance with 30 TEX. ADMIN. CODE § 334.54; and
 2. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
- b. Within 45 days after the effective date of the Commission Order, Mr. and Ms. Nguyen shall:
- i. Submit registration to indicate the current operational status of the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting and Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- ii. Submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 4.a. through 4.b.i. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Mr. and Ms. Nguyen shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 4.a. through 4.b.i. 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:

Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1830

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Mr. and Ms. Nguyen. Mr. and Ms. Nguyen are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. If Mr. and Ms. Nguyen fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. and Ms. Nguyen's failure to comply is not a violation of this Order. Mr. and Ms. Nguyen shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. and Ms. Nguyen shall notify the Executive Director within seven days after Mr. and Ms. Nguyen become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. and Ms. Nguyen shall be made in writing to the Executive Director. Extensions are not effective until Mr. and Ms. Nguyen receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. and Ms. Nguyen if the Executive Director determines that Mr. and Ms. Nguyen have not complied with one or more of the terms or conditions in this Order.

10. 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.
11. 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.

Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le
dba Shop-N-Go Superette
Docket No. 2006-1791-PST-E
Page 10

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF TRACY CHANDLER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Tracy Chandler. 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 and Requiring Certain Actions of Quoc Nguyen dba Shop-N-Go Superette” (the EDPRP) was filed with the Office of the Chief Clerk on July 3, 2008.

The EDPRP was mailed to Quoc Nguyen at his last known address on July 3, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Quoc Nguyen received notice of the EDPRP on July 5, 2008, as evidenced by the signature on the card.

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 and Requiring Certain Actions of Quoc Nguyen dba Shop-N-Go Superette” (the EDFARP) was filed with the Office of the Chief Clerk on February 6, 2009.

The EDFARP was mailed to Quoc Nguyen at his last known address on February 6, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Quoc Nguyen received notice of the EDFARP on February 9, 2009, as evidenced by the signature on the card.

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative

Penalty Against and Requiring Certain Actions of Quoc Nguyen aka Dinh Q. Nguyen dba Shop-N-Go Superette, Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette, and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette (the EDSARP) was filed with the Office of the Chief Clerk on May 1, 2009.

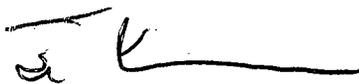
The EDSARP was mailed to Quoc Nguyen and Mr. and Ms. Nguyen at their last known addresses on May 1, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Quoc Nguyen received notice of the EDSARP. Service of Mr. and Ms. Nguyen was not successful.

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Third Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Quoc Nguyen aka Dinh Q. Nguyen dba Shop-N-Go Superette, Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette, and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette" (the EDTARP) was filed with the Office of the Chief Clerk on October 2, 2009.

The EDTARP was mailed to Quoc Nguyen and Mr. and Ms. Nguyen at their last known addresses on October 2, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Quoc Nguyen received notice of the EDTARP on October 8, 2009, as evidenced by the signature on the card. According to the return receipt "green cards," Mr. and Ms. Nguyen received notice of the EDTARP on October 3, 2009, as evidenced by the signatures on the cards.

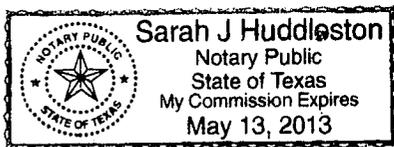
More than 20 days have elapsed since Quoc Nguyen and Mr. and Ms. Nguyen received notice of the EDTARP. Quoc Nguyen and Mr. and Ms. Nguyen failed to file an answer to the EDTARP, failed to request a hearing, and failed to schedule a settlement conference.



Tracy Chandler, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tracy Chandler, 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 15th day of December, A.D., 2009.



Sarah J. Huddleston

Notary Signature