

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1073-PST-E TCEQ ID RN101811685 CASE NO. 37926
RESPONDENT NAME: NIPA ENTERPRISES INC. DBA DICKINSON GROCERY

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

SITE WHERE VIOLATIONS OCCURRED: 2221 Farm to Market Road 517 East, Dickinson, Galveston County

TYPE OF OPERATION: convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received alleging that someone digging a hole for a sign next to the site noticed a gasoline odor. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired April 26, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Tom Greimel, Waste Enforcement Section, MC 128, (512) 239-5690

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

Respondent: Mr. Mohammed Abdul Mannan, Director, NIPA ENTERPRISES INC., 3802 Hickory View Court
 Friendswood, Texas 77546

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 checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: December 5, 2008</p> <p>Dates of Investigation Relating to this Case: December 16, 2008 (complaint investigation) May 12, 2009 (complaint follow-up)</p> <p>Date of NOE Relating to this Case: June 16, 2009</p> <p>Background Facts: The case was referred to the Litigation Division on October 19, 2009. The EDPRP was filed on November 6, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on February 9, 2010.</p> <p>Current Compliance Status: The contaminated soil has been removed from the site. The Respondent has not yet submitted documentation to certify compliance with the technical requirements. The Respondent does not have a delivery certificate.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)]. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. Failed to conduct reconciliation of detailed inventory control records at least once a month sufficiently accurate to detect a release as small as 1.0% of the total substance flow through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)]. 	<p>Total Assessed: \$15,695</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: \$565/\$15,130</p> <p>The Respondent paid \$565 of the administrative penalty. The remaining amount of \$15,130 shall be payable in 34 monthly payments of \$445 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 ED recognizes that the Respondent provided an amended registration form updating ownership information on May 13, 2009 (violation 6).</p> <p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately: <ol style="list-style-type: none"> Begin conducting effective manual or automatic inventory control procedures for all USTs (violation 5); and Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ (violations 7 and 8). Within 30 days: <ol style="list-style-type: none"> Implement a release detection method for all USTs at the Facility, begin recording volume measurements for regulated substance inputs, withdrawals, and the amount remaining in each tank each operating day, and begin conducting reconciliation of inventory control records (violations 2, 3, and 4); and Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs (violation 1). Within 60 days, conduct an investigation of the suspected release and implement appropriate corrective measures if required (violation 9). Within 75 days, submit written certification demonstrating compliance.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to record volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>5. Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>6. Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>7. Failed to obtain a delivery certificate by submitting a properly completed UST registration and self-certification form to the agency within 30 days of ownership change [30 TEX. ADMIN. CODE § 334.8(c)(4)(C)].</p> <p>8. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>9. Failed to conduct a release investigation to determine if the Facility's UST system is the source of off-site impacts or releases [30 TEX. ADMIN. CODE §§ 334.73 and 334.74 and TEX. WATER CODE § 26.356(c)].</p>		



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	22-Jun-2009			
	PCW	16-Oct-2009	Screening	25-Jun-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	NIPA ENTERPRISES INC. dba Dickinson Grocery				
Reg. Ent. Ref. No.	RN101811685				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37926	No. of Violations	7		
Docket No.	2009-1073-PST-E	Order Type	1660		
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Thomas Greimel		
		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	\$13,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	8.0% Enhancement	Subtotals 2, 3, & 7	\$1,080
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Notes	Enhancement for four NOV's without same or similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,594	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$6,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$14,330
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OTHER FACTORS AS JUSTICE MAY REQUIRE	9.5%	Adjustment	\$1,365
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost associated with violation no. 1.
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Final Penalty Amount	\$15,695
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$15,695
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$15,695
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Screening Date 25-Jun-2009

Docket No. 2009-1073-PST-E

PCW

Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery

Policy Revision 2 (September 2002)

Case ID No. 37926

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101811685

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

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	4	8%
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%
<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) 8%

>> **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 four NOVs without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 8%

Screening Date 25-Jun-2009 **Docket No.** 2009-1073-PST-E **PCW**
Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery *Policy Revision 2 (September 2002)*
Case ID No. 37926 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101811685
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number
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" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
<input type="text" value="100% of the rule requirement was not met."/>					
					Adjustment <input type="text" value="\$9,000"/>

Violation Events

Number of Violation Events Number of violation days
 mark only one with an x
 daily
 weekly
 monthly
 quarterly
 semiannual
 annual
 single event
Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>	
		Violation Subtotal <input type="text" value="\$2,000"/>

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 NIPA ENTERPRISES INC. dba Dickinson Grocery
Case ID No. 37926
Reg. Ent. Reference No. RN101811685
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
No commas or \$							

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]	\$1,300	8-Jul-2008	12-May-2009	1.00	\$65	\$1,300	\$1,365
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for the two petroleum USTs (\$650 per tank). The Date Required is the date of ownership change. The Final date is the investigation date.

Approx. Cost of Compliance

\$1,300

TOTAL

\$1,365

Screening Date 25-Jun-2009 **Docket No.** 2009-1073-PST-E **PCW**
Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery *Policy Revision 2 (September 2002)*
Case ID No. 37926 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101811685
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1)

Violation Description
 Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Failed to conduct reconciliation of detailed inventory control records at least once a month sufficiently accurate to detect a release as small as 1.0% of the total substance flow through for the month plus 130 gallons. Failed to record volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				
	Potential	x			25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes
 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

\$2,500

Violation Events

Number of Violation Events 1 44 Number of violation days

- daily
 - weekly
 - monthly
 - quarterly x
 - semiannual
 - annual
 - single event
- mark only one with an x*

Violation Base Penalty \$2,500

One quarterly event is recommended from the May 12, 2009 investigation date to the June 25, 2009 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes
The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$66 **Violation Final Penalty Total** \$2,957

This violation Final Assessed Penalty (adjusted for limits) \$2,957

Economic Benefit Worksheet

Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery
Case ID No. 37926
Reg. Ent. Reference No. RN101811685
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
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$1,500	12-May-2009	31-Mar-2010	0.88	\$66	n/a	\$66

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs including volume measurement and reconciliation of inventory control records. The Date Required is the investigation date. The Final Date is the estimated date of compliance.

Avoided Costs

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

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

\$1,500

TOTAL

\$66

Screening Date 25-Jun-2009 **Docket No.** 2009-1073-PST-E **PCW**
Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery *Policy Revision 2 (September 2002)*
Case ID No. 37926 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101811685
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)
Violation Description Failed to conduct effective manual or automatic inventory control procedures for the UST system at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Major	Moderate	Minor	
	Actual			
	Potential	x		Percent 25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%

Matrix Notes Human health or the environment 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

\$2,500

Violation Events

Number of Violation Events 1 44 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the May 12, 2009 investigation date to the June 25, 2009 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$22 **Violation Final Penalty Total** \$2,957

This violation Final Assessed Penalty (adjusted for limits) \$2,957

Economic Benefit Worksheet

Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery
Case ID No. 37926
Reg. Ent. Reference No. RN101811685
Media 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
No commas or \$							

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	\$500	12-May-2009	31-Mar-2010	0.88	\$22	n/a	\$22
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 conduct proper inventory control procedures. The Date Required is the date of the investigation. The Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$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

\$500

TOTAL

\$22

Screening Date 25-Jun-2009 **Docket No.** 2009-1073-PST-E **PCW**
Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery *Policy Revision 2 (September 2002)*
Case ID No. 37926 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101811685
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)
Violation Description Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect current ownership information.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent
	Release	Major	Moderate	Minor	
	Actual				
	Potential				0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000
\$1,000

Violation Events

Number of Violation Events 1 1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended based on the documentation of the violation during the May 12, 2009 investigation.

Good Faith Efforts to Comply 25.0% Reduction \$250

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent came into compliance with this violation on May 13, 2009, prior to the NOE dated June 16, 2009.

Violation Subtotal \$750

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$0 **Violation Final Penalty Total** \$909

This violation Final Assessed Penalty (adjusted for limits) \$909

Economic Benefit Worksheet

Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery
Case ID No. 37926
Reg. Ent. Reference No. RN101811685
Media 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
No commas or \$							

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)	\$100	12-May-2009	13-May-2009	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. Date Required is the investigation date. 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

\$100

TOTAL

\$0

Screening Date 25-Jun-2009 **Docket No.** 2009-1073-PST-E **PCW**
Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery *Policy Revision 2 (September 2002)*
Case ID No. 37926 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101811685
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(C)
Violation Description Failed to obtain a delivery certificate by submitting a properly completed UST registration and self-certification form to the agency within 30 days of ownership change. Specifically, ownership changed on July 7, 2008 but a delivery certificate was not obtained.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events: 1 352 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$1,000

One annual event is recommended based on documentation of the violation during the May 15, 2009 investigation.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/ Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount: \$8 Violation Final Penalty Total: \$1,183

This violation Final Assessed Penalty (adjusted for limits) \$1,183

Economic Benefit Worksheet

Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery
Case ID No. 37926
Reg. Ent. Reference No. RN101811685
Media Petroleum Storage Tank
Violation No. 5

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				0.00	\$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)	\$100	7-Aug-2008	31-Mar-2010	1.65	\$8	n/a	\$8

Notes for DELAYED costs

Estimated cost to obtain a delivery certificate by submitting a properly completed UST registration and self-certification form. The Date Required is the date when the self-certification was due. The Final Date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$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

\$100

TOTAL

\$8

Screening Date 25-Jun-2009 **Docket No.** 2009-1073-PST-E **PCW**
Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery *Policy Revision 2 (September 2002)*
Case ID No. 37926 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101811685
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 6
Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)
Violation Description Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, the Respondent received four deliveries of fuel without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential		x	5%

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				
				0%

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 4 4 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,000

Four single events are recommended for accepting four deliveries of fuel.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$0 Violation Final Penalty Total \$2,365

This violation Final Assessed Penalty (adjusted for limits) \$2,365

Economic Benefit Worksheet

Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery
Case ID No. 37926
Reg. Ent. Reference No. RN101811685
Media Petroleum Storage Tank
Violation No. 6

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				0.00	\$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

Economic benefit included in Violation No. 4.

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

\$0

TOTAL

\$0

Screening Date 25-Jun-2009 **Docket No.** 2009-1073-PST-E **PCW**
Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery *Policy Revision 2 (September 2002)*
Case ID No. 37926 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101811685
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Thomas Greimel

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code §§ 334.73 and 334.74 and Tex. Water Code § 26.356(c)

Violation Description
 Failed to conduct a release investigation to determine if the Facility's UST system is the source of off-site impacts or releases. Specifically, a soil investigation report, dated November 14, 2008, indicates the presence of hydrocarbon vapors and contamination in soil on property adjoining the Respondent's Facility and no investigation has been conducted at the Respondent's Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual				
	Potential	x			Percent 25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%

Matrix Notes
 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

\$2,500

Violation Events

1 44 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the May 12, 2009 investigation date to the June 25, 2009 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes
 The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$133 **Violation Final Penalty Total** \$2,957

This violation Final Assessed Penalty (adjusted for limits) \$2,957

Economic Benefit Worksheet

Respondent NIPA ENTERPRISES INC. dba Dickinson Grocery
Case ID No. 37926
Reg. Ent. Reference No. RN101811685
Media Petroleum Storage Tank
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

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)	\$3,000	12-May-2009	31-Mar-2010	0.88	\$133	n/a	\$133

Notes for DELAYED costs

Estimated cost to conduct a release investigation. Date Required in the investigation date. Final Date is the anticipated 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

\$3,000

TOTAL

\$133

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603479643 NIPA ENTERPRISES INC.	Classification: AVERAGE	Rating: 5.33
Regulated Entity:	RN101811685 Dickinson Grocery	Classification: AVERAGE	Site Rating: 5.33
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		60524
	REGISTRATION		
Location:	2221 FM 517 RD E, DICKINSON, TX, 77539		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	July 09, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 09, 2004 to July 09, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Thomas Greimel	Phone:	(512) 239-5690

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/operator of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner/operator? | NIPA ENTERPRISES INC. |
| 4. If Yes, who was/were the prior owner(s)/operator(s) ? | QURESHE, SHAMEM |
| 5. When did the change(s) in owner or operator occur? | 7/8/2008 |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO | |

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 | 12/29/2005 | (439998) |
| 2 | 04/07/2006 | (454735) |
| 3 | 07/05/2007 | (563253) |
| 4 | 08/27/2007 | (571851) |
| 5 | 10/16/2007 | (597814) |
| 6 | 04/21/2009 | (742812) |
| 7 | 06/16/2009 | (724859) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | | |
|--------------|---|-----------------|-----------------|----------|
| Date: | 12/29/2005 | (439998) | | |
| Self Report? | NO | | Classification: | Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(4) | | | |
| Description: | During the investigation on November 9, 2005, Investigator Carl Vinesett determined that the facility had failed to maintain proof of attendance and completion of Stage II training for all employees. | | | |
| | | | | |
| Date: | 08/28/2006 | (509996) | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III) | | | |
| Description: | Failure to have the line leak detector(s) receive an annual performance test. | | | |
| | | | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(3)(A) | | | |
| Description: | Failure to have swivel adaptors installed as required. | | | |
| | | | | |
| Date: | 07/05/2007 | (563253) | | |
| Self Report? | NO | | Classification: | Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(6) | | | |
| Description: | Failure to maintain a record of the results of the daily inspections. | | | |
| | | | | |
| Self Report? | NO | | Classification: | Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(4) | | | |
| Description: | Failure to maintain proof of attendance and completion of the training. | | | |
| | | | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.244(3) | | | |
| Description: | Failure to conduct monthly inspections. | | | |
| | | | | |
| Self Report? | NO | | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(1)(C) | | | |

Description: Failure to be onboard refueling vapor recovery (ORVR) compatible, as defined in §115.240 of this title in accordance with the schedules in §115.249 of this title.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)

Description: Failure to maintain the Stage II vapor recovery system in proper operating condition.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.222(1)

Description: Failure to ensure the container is equipped with a submerged fill pipe as defined in §101.1 of this title.

Date: 08/27/2007 (571851)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)

Description: Failure to maintain a record of the results of the daily inspections.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)

Description: Failure to maintain proof of attendance and completion of the training.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)

Description: Failure to conduct monthly inspections.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)

Description: Failure to be onboard refueling vapor recovery (ORVR) compatible, as defined in §115.240 of this title in accordance with the schedules in §115.249 of this title.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)

Description: Failure to maintain the Stage II vapor recovery system in proper operating condition.

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
NIPA ENTERPRISES INC. DBA
DICKINSON GROCERY;
RN101811685**

§
§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1073-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 NIPA ENTERPRISES INC. dba Dickinson Grocery (“NIPA”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and NIPA appear before the Commission and together stipulate that:

1. NIPA owns and operates a convenience store with retail sales of gasoline located at 2221 Farm to Market Road 517 East in Dickinson, Galveston County, Texas (the “Facility”). NIPA’s two underground storage tanks (“USTs”) are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. NIPA’s USTs contain a regulated petroleum substance as defined in the rules of the Commission.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and NIPA agree that the Commission has jurisdiction to enter this Agreed Order, and that NIPA is subject to the Commission’s jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by NIPA of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of fifteen thousand six hundred ninety-five dollars (\$15,695.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). NIPA paid five hundred sixty-five dollars (\$565.00) of the administrative penalty. The remaining amount of fifteen thousand one hundred thirty dollars (\$15,130.00) of the administrative penalty shall be payable in 34 monthly payments of four hundred forty-five dollars

(\$445.00) each. 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 NIPA 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, NIPA's failure to meet the payment schedule of this Agreed Order constitutes the failure by NIPA to timely and satisfactorily comply with all of the terms of this Agreed Order

6. 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.
7. The Executive Director of the TCEQ and NIPA agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that on May 13, 2009, NIPA submitted an amended registration form to reflect the current ownership information for the Facility.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that NIPA has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on May 12, 2009, a TCEQ Houston Regional Office investigator documented that NIPA violated:
 - a. 30 TEX. ADMIN. CODE § 37.815(a) and (b) by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs;
 - b. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring);

- c. 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1) by failing to conduct reconciliation of detailed inventory control records at least once a month sufficiently accurate to detect a release as small as 1.0% of the total substance flow through for the month plus 130 gallons;
 - d. 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1) by failing to record volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day;
 - e. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for the UST system;
 - f. 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect current ownership information;
 - g. 30 TEX. ADMIN. CODE § 334.8(c)(4)(C) by failing to obtain a delivery certificate by submitting a properly completed UST registration and self-certification form to the agency within 30 days of ownership change. Specifically, ownership changed on July 7, 2008 but a delivery certificate was not obtained;
 - h. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a) by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, the Respondent received four deliveries of fuel without a delivery certificate;
 - i. 30 TEX. ADMIN. CODE §§ 334.73 and 334.74 and TEX. WATER CODE § 26.356(c) by failing to conduct a release investigation to determine if the Facility's UST system is the source of off-site impacts or releases. Specifically, a soil investigation report dated November 14, 2008, indicates the presence of hydrocarbon vapors and contamination in soil on property adjoining the Respondent's Facility and no investigation has been conducted at the Respondent's Facility.
2. NIPA received notice of the violations alleged in Section II ("Allegations") on or about June 21, 2009.

III. DENIALS

NIPA generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that NIPA pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and NIPA'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: NIPA ENTERPRISES, INC. dba Dickinson Grocery, Docket No. 2009-1073-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. NIPA shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, NIPA shall:
 - i. Begin conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48; and
 - ii. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ, in accordance with 30 TEX. ADMIN. CODE § 334.8.
 - b. Within 30 days after the effective date of this Agreed Order, NIPA shall:
 - i. Implement a release detection method for all USTs at the Facility, begin recording volume measurements for regulated substance inputs, withdrawals, and the amount remaining in each tank each operating day, and begin conducting reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - ii. Demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in accordance with 30 TEX. ADMIN. CODE § 37.815.
 - c. Within 60 days after the effective date of this Agreed Order, NIPA shall conduct an investigation of the suspected release and implement appropriate corrective measures if required, in accordance with 30 TEX. ADMIN. CODE § 334.74.

- d. Within 75 days after the effective date of this Agreed Order, NIPA shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. 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.”

NIPA shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon NIPA. NIPA is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If NIPA fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, NIPA's failure to comply is not a violation of this Agreed Order. NIPA shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. NIPA shall notify the Executive Director within seven days after NIPA becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and

substantiated showing of good cause. All requests for extensions by NIPA shall be made in writing to the Executive Director. Extensions are not effective until NIPA receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against NIPA 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.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to NIPA, or three days after the date on which the Commission mails notice of this Agreed Order to NIPA, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Stephane Bergeron Perdue

For the Executive Director

4/4/2010

Date

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

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on NIPA's compliance history;
- Greater scrutiny of any permit applications submitted by NIPA;
- 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 NIPA;
- Automatic referral to the Attorney General's Office of any future enforcement actions against NIPA; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Mohammad Mannan

Signature

2-9-10

Date

Mohammad Abdul Mannan

Name (Printed or typed)

Director

Title

Authorized representative of

NIPA ENTERPRISES INC. dba Dickinson Grocery