

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2007-0649-PST-E TCEQ ID RN102281268 CASE NO. 33483**

**RESPONDENT NAME: CHUEN F. CHEUNG DBA A-SUNNYS & MINGWEN HSU DBA A-SUNNYS**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<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:** 6240 Synott Road, Houston, Harris County

**TYPE OF OPERATION:** out-of-service petroleum storage tank facility

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** One complaint was received, alleging that out-of-service USTs were located at the Facility. 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 Respondents expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired February 15, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Ms. Kimberly Morales, Air Enforcement Section, MC R-12, (713) 422-8938

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

**Respondent:** Mr. Chuen F. Cheung, 1816 Ravenel Lane, Sugar Land, Texas 77479 and Ms. Mingwen Hsu, 1816 Ravenel Lane, Sugar Land, Texas 77479

**Respondent's Attorney:** Mr. Vincent A. Gamal, Attorney at Law, 7746 Pouter Drive, Houston, Texas 77083

**RESPONDENT NAME: CHUEN F. CHEUNG DBA A-SUNNYS AND  
MINGWEN HSU DBA A-SUNNYS  
DOCKET NO.: 2007-0649-PST-E**

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> June 8, 2006</p> <p><b>Dates of Investigation Relating to this Case:</b> June 13, 2006 (complaint) January 17, 2007 (records review)</p> <p><b>Date of NOE Relating to this Case:</b> April 16, 2007</p> <p><b>Background Facts:</b> The EDPRP was filed on October 26, 2007. The EDFARP was filed on October 3, 2008. The EDSARP was filed on February 9, 2009. Respondents filed an answer and the case was referred to SOAH. Discovery was exchanged and an evidentiary hearing was scheduled. Settlement was achieved and the agreed order was signed on May 4, 2010.</p> <p><b>Current Compliance Status:</b> No outstanding technical requirements.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>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 [30 TEX. ADMIN. CODE § 334.47(a)(2)].</li> <li>Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</li> </ol>	<p><b>Total Assessed:</b> \$7,620</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$235/\$7,385</p> <p>Respondents paid \$235 of the administrative penalty. The remaining amount of \$7,385 shall be payable in 35 monthly payments of \$211 each.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on or about November 19, 2007, Respondents removed the USTs from the ground and submitted an updated registration.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 26, 2007

## TCEQ

<b>DATES</b>	<b>Assigned</b>	23-Apr-2007			
	<b>PCW</b>	15-Jan-2010	<b>Screening</b>	8-May-2007	<b>EPA Due</b>

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Chuen F. Cheung dba A-Sunnys and Mingwen Hsu dba A-Sunnys				
<b>Reg. Ent. Ref. No.</b>	RN102281268				
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	33483	<b>No. of Violations</b>	2
<b>Docket No.</b>	2007-0649-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Kimberly Morales
<b>Multi-Media</b>		<b>EC's Team</b>	EnforcementTeam 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$6,000
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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

<b>Compliance History</b>	27% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,620
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Notes: Enhancement for one 1660 Order, one NOV with same or similar violations and one NOV without same or similar violations.

<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

<b>0% Enhancement*</b>	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$4,518  
 Approx. Cost of Compliance \$10,100  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,620
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

<b>Final Penalty Amount</b>	\$7,620
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$7,620
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<b>DEFERRAL</b>	0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$7,620
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Screening Date 8-May-2007

Docket No. 2007-0649-PST-E

PCW

Respondent Chuen F. Cheung dba A-Sunnys and Mingwen Hsu dba

Policy Revision 2 (September 2002)

Case ID No. 33483

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN102281268

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Kimberly Morales

### 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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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) 27%

#### >> 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 1660 Order, one NOV with same or similar violations and one NOV without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

Screening Date 8-May-2007

Docket No. 2007-0649-PST-E

PCW

Respondent Chuen F. Cheung dba A-Sunnys and Mingwen Hsu dba A-Sunnys

Policy Revision 2 (September 2002)

Case ID No. 33483

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN102281268

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Kimberly Morales

Violation Number 1

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

Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs 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

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 2 54 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

Two monthly events are recommended based on documentation of the violation during the March 15, 2007 record review date to the May 8, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,514

Violation Final Penalty Total \$6,350

This violation Final Assessed Penalty (adjusted for limits) \$6,350

## Economic Benefit Worksheet

**Respondent** Chuen F. Cheung dba A-Sunnys and Mingwen Hsu dba A-Sunnys

**Case ID No.** 33483

**Reg. Ent. Reference No.** RN102281268

**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				0.0	\$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)	\$10,000	22-Dec-1998	30-Dec-2007	9.0	\$4,514	n/a	\$4,514

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. The Date Required is the date the respondent was required to upgrade the UST system and 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				0.0	\$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** \$4,514

Screening Date 8-May-2007

Docket No. 2007-0649-PST-E

PCW

Respondent Chuen F. Cheung dba A-Sunnys and Mingwen Hsu dba A-Sunnys

Policy Revision 2 (September 2002)

Case ID No. 33483

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN102281268

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Kimberly Morales

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to provide an amended UST registration to the TCEQ for any change or additional information regarding USTs within 30 days from the date of occurrence of the change. Specifically, the registration was not updated to reflect the current out-of-service status of the USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential			0%	

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		x			
	100% of the rule requirement was not met.				
Adjustment					\$9,000

\$1,000

Violation Events

Number of Violation Events 1 54 Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the March 15, 2007 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,270

This violation Final Assessed Penalty (adjusted for limits) \$1,270

## Economic Benefit Worksheet

**Respondent** Chuen F. Cheung dba A-Sunnys and Mingwen Hsu dba A-Sunnys

**Case ID No.** 33483

**Reg. Ent. Reference No.** RN102281268

**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

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	15-Mar-2007	14-Jan-2008	0.8	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to prepare and submit an updated UST registration. The Date Required is the date of the investigation and 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				0.0	\$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

CH1 of 2

Customer/Respondent/Owner-Operator:	CN603139809	CHEUNG, CHUEN F	Classification: AVERAGE	Rating: 1.80
Regulated Entity:	RN102281268	A-SUNNYS	Classification: AVERAGE	Site Rating: 1.80
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	43969
Location:	6240 SYNOTT RD, HOUSTON, TX, 77083		Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	May 21, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 21, 2002 to May 21, 2007			

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

Name: Chris Holcomb Phone: (512) 239-2541

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? CHUEN F CHEUNG AND MINGWEN HSU
4. If Yes, who was/were the prior owner(s)? TSUO-MIN CHI
5. When did the change(s) in ownership occur? 4-19-2006

## Components (Multimedia) for the Site :

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

Effective Date: 10/02/2006 ADMINORDER 2004-1224-PST-E  
Classification: Moderate  
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]  
30 TAC Chapter 37, SubChapter I 37.815(b)[G]  
Description: A mechanism was received, but it was not in the correct format.

- 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 01/10/2003 (3604)  
2 02/25/2003 (276323)  
3 07/30/2004 (285164)  
4 06/28/2006 (483053)  
5 04/16/2007 (537064)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 02/25/2003 (276323)**

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]  
30 TAC Chapter 37, SubChapter I 37.815(b)[G]

Description: Failure to provide acceptable financial assurance.

**Date: 06/26/2006 (482730)**

Self Report? NO Classification: Moderate

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

Description: At the time of the investigation the facility was out of service.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: At the time of the investigation, the registration had not been amended to reflect the out of service status of the underground storage tanks.

- 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:	CN603188491 HSU, MINGWEN	Classification: AVERAGE	Rating: 1.80
Regulated Entity:	RN102281268 A-SUNNYS	Classification: AVERAGE	Site Rating: 1.80
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	43969
Location:	6240 SYNOTT RD, HOUSTON, TX, 77083	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	May 21, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 21, 2002 to May 21, 2007		

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

Name: Chris Holcomb Phone: (512) 239-2541

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? Yes
3. If Yes, who is the current owner? CHUEN F CHEUNG AND MINGWEN HSU
4. If Yes, who was/were the prior owner(s)? TSUO-MIN CHI
5. When did the change(s) in ownership occur? 4-19-2006

## Components (Multimedia) for the Site :

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

Effective Date: 10/02/2006 ADMINORDER 2004-1224-PST-E  
Classification: Moderate  
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]  
30 TAC Chapter 37, SubChapter I 37.815(b)[G]  
Description: A mechanism was received, but it was not in the correct format.

- 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 01/10/2003 (3604)
- 2 02/25/2003 (276323)
- 3 07/30/2004 (285164)
- 4 06/28/2006 (483053)
- 5 04/16/2007 (537064)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 02/25/2003 (276323)**

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]  
30 TAC Chapter 37, SubChapter I 37.815(b)[G]

Description: Failure to provide acceptable financial assurance.

**Date: 06/26/2006 (482730)**

Self Report? NO Classification: Moderate

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

Description: At the time of the investigation the facility was out of service.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: At the time of the investigation, the registration had not been amended to reflect the out of service status of the underground storage tanks.

- 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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	
<b>CHUEN F. CHEUNG DBA A-</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>SUNNYS AND MINGWEN HSU</b>	<b>§</b>	
<b>DBA A-SUNNYS;</b>	<b>§</b>	
<b>RN102281268</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**AGREED ORDER**  
**DOCKET NO. 2007-0649-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 Chuen F. Cheung dba A-Sunnys and Mingwen Hsu dba A-Sunnys (“Mr. Cheung and Ms. Hsu”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Cheung and Ms. Hsu, represented by Vincent A. Gamal, Attorney at Law, appear before the Commission and together stipulate that:

1. On the date of the violations alleged in Section II (“Allegations”), Mr. Cheung and Ms. Hsu owned two underground storage tanks (“USTs”) and a convenience store located at 6240 Synott Road, Houston, Harris County, Texas (the “Facility”).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mr. Cheung and Ms. Hsu agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Cheung and Ms. Hsu are 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 Mr. Cheung and Ms. Hsu of any violation alleged in Section II, nor of any statute or rule.
5. An administrative penalty in the amount of seven thousand six hundred twenty dollars (\$7,620.00) is assessed by the Commission in settlement of the violations alleged in Section

II (“Allegations”). Mr. Cheung and Ms. Hsu paid two hundred thirty-five dollars (\$235.00) of the administrative penalty. The remaining amount of seven thousand three hundred eighty-five dollars (\$7,385.00) of the administrative penalty shall be payable in 35 monthly payments of two hundred eleven dollars (\$211.00) 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 Mr. Cheung and Ms. Hsu fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Mr. Cheung and Ms. Hsu’s failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Cheung and Ms. Hsu 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 Mr. Cheung and Ms. Hsu 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 the USTs were removed from the ground and an updated registration was submitted to TCEQ on or about November 19, 2007.
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 Mr. Cheung and Ms. Hsu have 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 January 17, 2007, a TCEQ Houston Regional Office investigator documented that Mr. Cheung and Ms. Hsu violated:
  - a. 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing 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; and

- b. 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current out-of-service status of the USTs.
2. Mr. Cheung and Ms. Hsu received notice of the violations on or about April 21, 2007.

### III. DENIALS

Mr. Cheung and Ms. Hsu generally deny each allegation in Section II (“Allegations”).

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Cheung and Ms. Hsu pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and Mr. Cheung and Ms. Hsu’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: Chuen F. Cheung dba A-Sunnys and Mingwen Hsu dba A-Sunnys, Docket No. 2007-0649-PST-E” to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Cheung and Ms. Hsu. Mr. Cheung and Ms. Hsu are 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.
3. If Mr. Cheung and Ms. Hsu 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, Mr. Cheung and Ms. Hsu’s failure to comply is not a violation of this Agreed Order. Mr. Cheung and Ms. Hsu shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Cheung and Ms. Hsu shall notify the Executive Director within seven days after Mr. Cheung

and Ms. Hsu becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. 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 Mr. Cheung and Ms. Hsu shall be made in writing to the Executive Director. Extensions are not effective until Mr. Cheung and Ms. Hsu receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Cheung and Ms. Hsu 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.
6. 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.
7. 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 Mr. Cheung and Ms. Hsu, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Cheung and Ms. Hsu, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Chuen F. Cheung dba A-Sunny and Mingwen Hsu dba A-Sunny  
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

*[Handwritten Signature]*

For the Executive Director

*[Handwritten Signature]*

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, 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 Mr. Cheung and Ms. Hsu's compliance history;
- \* Greater scrutiny of any permit applications submitted by Mr. Cheung and Ms. Hsu;
- \* 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 Mr. Cheung and Ms. Hsu;
- \* Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Cheung and Ms. Hsu; and
- \* TCEQ seeking other relief as authorized by law.

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

*[Handwritten Signature]*  
Signature - Chuen F. Cheung

*[Handwritten Date]*  
Date

*[Handwritten Signature]*  
Signature - Mingwen Hsu

*[Handwritten Date]*  
Date