# EXECUTIVE SUMMARY - ENFORCEMENT MATTER
## DOCKET NO. 2009-0588-PST-E RN100916659 CASE NO. 37531
## RESPONDENT NAME: NHAT Q. TRAN DBA WALLISVILLE MARKET

| **ORDER TYPE:** | | |
|---|---|---|
| __1660 AGREED ORDER | __FINDINGS AGREED ORDER | __FINDINGS ORDER FOLLOWING SOAH HEARING |
| __FINDINGS DEFAULT ORDER | _X_SHUTDOWN ORDER | __IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| __AMENDED ORDER | __EMERGENCY ORDER | |
| **CASE TYPE:** | | |
| ___AIR | ___MULTI-MEDIA (check all that apply) | ___INDUSTRIAL HAZARDOUS WASTE |
| __PUBLIC WATER SUPPLY | _X_PETROLEUM STORAGE TANKS | __OCCUPATIONAL CERTIFICATION |
| ___WATER QUALITY | __SEWAGE SLUDGE | __UNDERGROUND INJECTION CONTROL |
| ___MUNICIPAL SOLID WASTE | __RADIOACTIVE WASTE | __DRY CLEANER REGISTRATION |

**SITE WHERE VIOLATION(S) OCCURRED:** 9711 Wallisville Road, Houston, Harris County

**TYPE OF OPERATION:** convenience store

**SMALL BUSINESS:** _X_ Yes ____ No

**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 Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired July 12, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
**TCEQ Enforcement Coordinator:** Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577
**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623
**Respondent:** Ms. Nhat Q. Tran, Owner/Operator, Wallisville Market, 9711 Wallisville Road, Houston, Texas 77013
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

## VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| **Type of Investigation**:<br><br>___ Complaint<br>_X_ Routine<br>___ Enforcement Follow-up<br>___ Records Review<br><br>**Date of Complaint Relating to this Case**:<br>None<br><br>**Date of Investigation Relating to this Case**:<br>April 6, 2009<br><br>**Date of NOE Relating to this Case**:<br>May 20, 2009<br><br>**Background Facts**:<br>The EDPRP was filed on September 3, 2009, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on September 5, 2009. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.<br><br>**Current Compliance Status:**<br>Respondent has not submitted documentation to certify compliance with the technical requirements. Respondent's delivery certificate expired January 31, 2010, and cannot be renewed until all of the terms and conditions of this Order are satisfied.<br><br>**PST:**<br>1. Failed to monitor USTs 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 each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [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)].<br><br>2. Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Station [30 TEX. ADMIN. CODE § 334.48(c)].<br><br>3. Failed to conduct daily and monthly inspections of the Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.244(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. | **Total Assessed**: $7,720<br><br>**Total Deferred**: $0<br>___ Expedited Order<br>___ Financial Inability to Pay<br>___ SEP Conditional Offset<br><br>**Total Due to General Revenue**: $7,720<br><br>This is a Default Order. Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.<br><br>**Site Compliance History Classification:**<br>__ High _X_ Average ___ Poor<br><br>**Person Compliance History Classification:**<br>__ High _X_ Average ___ Poor<br><br>**Major Source**: ___ Yes _X_ No<br><br>**Applicable Penalty Policy:** September 2002 | **Corrective Actions Taken:**<br><br>The Executive Director recognizes that Respondent performed the following corrective measures at the Station:<br><br>1. Began conducting proper inventory control procedures (violation no. 1);<br><br>2. Began maintaining Stage II records at the Station (violation no. 4); and<br><br>3. Began conducting daily and monthly inspections of the Stage II vapor recovery system (violation no. 3).<br><br>**Ordering Provisions:**<br><br>Respondent's UST fuel delivery certificate is revoked immediately. Respondent shall cease accepting deliveries of fuel until such time as a valid delivery certificate is obtained. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.<br><br>Respondent shall undertake the following technical requirements:<br><br>1. Immediately, take the following steps to shut down operations of all USTs at the Station:<br>a. Cease dispensing fuel from the USTs;<br>b. Cease receiving deliveries of regulated substances into the USTs;<br>c. Padlock the dispensers;<br>d. Empty the USTs of all regulated substances; and<br>e. Temporarily remove the USTs from service.<br><br>2. Respondent's USTs shall remain out of service until such time as Respondent demonstrates that the release detection violations have been corrected (violation no. 1).<br><br>3. If Respondent elects to permanently remove from service any portion of the UST system, Respondent shall immediately permanently remove the UST system from service, and within 15 days submit a written report documenting compliance. |

**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| 4. Failed to maintain all required Stage II records at the Station and make them immediately available for review upon request by agency personnel [30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. | | 4. Within 10 days, surrender her UST fuel delivery certificate to the TCEQ.<br><br>5. Within 15 days, submit documentation to demonstrate compliance with Ordering Provisions nos. 1 and 4.<br><br>6. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:<br>a. Implement a release detection method and begin conducting volume measurement and reconciliation of inventory control records for all USTs at the Station; and<br>b. Obtain a new fuel delivery certificate.<br><br>7. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Station where the delivery certificate is clearly visible at all times.<br><br>8. Within 10 days of resuming retail sales of gasoline, submit written certification demonstrating compliance. |

# Penalty Calculation Worksheet (PCW)

*Policy Revision 2 (September 2002)* *PCW Revision October 30, 2008*

TCEQ

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 20-Apr-2009 | | | | |
| PCW | 5-Aug-2009 | Screening | 21-Apr-2009 | EPA Due | |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | Nhat Q. Tran d/b/a Wallisville Market | | |
| Reg. Ent. Ref. No. | RN100916659 | | |
| Facility/Site Region | 12-Houston | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 37531 | No. of Violations | 4 |
| Docket No. | 2009-0588-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Rajesh Acharya |
| | | EC's Team | Enforcement Team 6 |

| | | | |
|---|---|---|---|
| Admin. Penalty $ Limit Minimum | $0 | Maximum | $10,000 |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** *Subtotal 1* **$7,000**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** **5.0%** Enhancement *Subtotals 2, 3, & 7* **$350**

Notes: Enhancement for one NOV for same or similar violations.

**Culpability** No **0.0%** Enhancement *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** *Subtotal 5* **$0**

**Economic Benefit** **0.0%** Enhancement* *Subtotal 6* **$0**

| | |
|---|---|
| Total EB Amounts | $421 |
| Approx. Cost of Compliance | $2,850 |

**Capped at the Total EB $ Amount*

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **$7,350**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **5.0%** *Adjustment* **$370**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 3.

*Final Penalty Amount* **$7,720**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **$7,720**

**DEFERRAL** **0.0%** Reduction *Adjustment* **$0**

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

Notes: Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** **$7,720**

| | | | | |
|---|---|---|---|---|
| **Screening Date** | 21-Apr-2009 | **Docket No.** | 2009-0588-PST-E | **PCW** |
| **Respondent** | Nhat Q. Tran d/b/a Wallisville Market | | | *Policy Revision 2 (September 2002)* |
| **Case ID No.** | 37531 | | | *PCW Revision October 30, 2008* |
| **Reg. Ent. Reference No.** | RN100916659 | | | |
| **Media [Statute]** | Petroleum Storage Tank | | | |
| **Enf. Coordinator** | Rajesh Acharya | | | |

# Compliance History Worksheet

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

| Component | Number of... | *Enter Number Here* | Adjust. |
|---|---|---|---|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (*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% |
| | | *Please Enter Yes or No* | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

***Adjustment Percentage (Subtotal 2)*** 5%

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

No

***Adjustment Percentage (Subtotal 3)*** 0%

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

Average Performer

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

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV for same or similar violations.

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

| | | | | |
|---|---|---|---|---|
| **Screening Date** | 21-Apr-2009 | **Docket No.** | 2009-0588-PST-E | **PCW** |
| **Respondent** | Nhat Q. Tran d/b/a Wallisville Market | | | *Policy Revision 2 (September 2002)* |
| **Case ID No.** | 37531 | | | *PCW Revision October 30, 2008* |
| **Reg. Ent. Reference No.** | RN100916659 | | | |
| **Media [Statute]** | Petroleum Storage Tank | | | |
| **Enf. Coordinator** | Rajesh Acharya | | | |

**Violation Number** 1

**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 USTs 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 each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory 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: 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

Number of Violation Events 1 | 15 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $2,500

One monthly event is recommended based on documentation of the violation during the April 6, 2009 investigation to the April 21, 2009 screening date.

## Good Faith Efforts to Comply

**0.0%** Reduction — $0

| | Before NOV | NOV to EDPRP/Settlement |
|---|---|---|
| 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

**Estimated EB Amount** $44

## Statutory Limit Test

**Violation Final Penalty Total** $2,757

**This violation Final Assessed Penalty (adjusted for limits)** $2,757

# Economic Benefit Worksheet

**Respondent** Nhat Q. Tran d/b/a Wallisville Market
**Case ID No.** 37531
**Reg. Ent. Reference No.** RN100916659
**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) | $1,500 | 6-Apr-2009 | 6-Nov-2009 | 0.59 | $44 | n/a | $44 |

**Notes for DELAYED costs**: Estimated cost to provide release detection for the USTs including volume measurement and reconciliation of inventroy control records. 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 | | | | 0.00 | $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** $44

| | | | | |
|---|---|---|---|---|
| **Screening Date** | 21-Apr-2009 | **Docket No.** | 2009-0588-PST-E | **PCW** |
| **Respondent** | Nhat Q. Tran d/b/a Wallisville Market | | | *Policy Revision 2 (September 2002)* |
| **Case ID No.** | 37531 | | | *PCW Revision October 30, 2008* |
| **Reg. Ent. Reference No.** | RN100916659 | | | |
| **Media [Statute]** | Petroleum Storage Tank | | | |
| **Enf. Coordinator** | Rajesh Acharya | | | |

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 334.48(c)

**Violation Description** Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Station.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

**OR**

| Release | Harm: 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

Number of Violation Events: 1

53 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 based on documentation of the violation during the April 6, 2009 investigation to the May 29, 2009 compliance date.

## Good Faith Efforts to Comply

**0.0%** Reduction — $0

| | 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 for this violation.

**Violation Subtotal** $2,500

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $4

## Statutory Limit Test

**Violation Final Penalty Total** $2,757

**This violation Final Assessed Penalty (adjusted for limits)** $2,757

# Economic Benefit Worksheet

**Respondent** Nhat Q. Tran d/b/a Wallisville Market
**Case ID No.** 37531
**Reg. Ent. Reference No.** RN100916659
**Media** Petroleum Storage Tank
**Violation No.** 2

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **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 | 6-Apr-2009 | 29-May-2009 | 0.15 | $4 | n/a | $4 |
| 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 inventory control procedures for all USTs. 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** $500

**TOTAL** $4

| | | | |
|---|---|---|---|
| **Screening Date** | 21-Apr-2009 | **Docket No.** 2009-0588-PST-E | **PCW** |
| **Respondent** | Nhat Q. Tran d/b/a Wallisville Market | | *Policy Revision 2 (September 2002)* |
| **Case ID No.** | 37531 | | *PCW Revision October 30, 2008* |
| **Reg. Ent. Reference No.** | RN100916659 | | |
| **Media [Statute]** | Petroleum Storage Tank | | |
| **Enf. Coordinator** | Rajesh Acharya | | |

**Violation Number** 3

**Rule Cite(s)** 30 Tex. Admin. Code § 115.244(1) and (3) and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to conduct daily and monthly inspections of the Stage II vapor recovery system.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | x | |

**Percent** 10%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 0%

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

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events 1 | 53 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $1,000

One quarterly event is recommended based on documentation of the violation during the April 6, 2009 investigation to the May 29, 2009 compliance date.

## Good Faith Efforts to Comply

**0.0%** Reduction — $0

| | 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 for this violation.

**Violation Subtotal** $1,000

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $370

## Statutory Limit Test

**Violation Final Penalty Total** $1,103

**This violation Final Assessed Penalty (adjusted for limits)** $1,103

# Economic Benefit Worksheet

**Respondent** Nhat Q. Tran d/b/a Wallisville Market
**Case ID No.** 37531
**Reg. Ent. Reference No.** RN100916659
**Media** Petroleum Storage Tank
**Violation No.** 3

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **Delayed Costs** | | | | | | | |
| Equipment | | | | 0.00 | $0 | $0 | $0 |
| Buildings | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Engineering/construction | | | | 0.00 | $0 | $0 | $0 |
| Land | | | | 0.00 | $0 | n/a | $0 |
| Record Keeping System | | | | 0.00 | $0 | n/a | $0 |
| Training/Sampling | | | | 0.00 | $0 | n/a | $0 |
| Remediation/Disposal | | | | 0.00 | $0 | n/a | $0 |
| Permit Costs | | | | 0.00 | $0 | n/a | $0 |
| Other (as needed) | | | | 0.00 | $0 | n/a | $0 |
| Notes for DELAYED costs | | | | | | | |
| **Avoided Costs** | ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | | | | | | |
| Disposal | | | | 0.00 | $0 | $0 | $0 |
| Personnel | | | | 0.00 | $0 | $0 | $0 |
| Inspection/Reporting/Sampling | | | | 0.00 | $0 | $0 | $0 |
| Supplies/equipment | | | | 0.00 | $0 | $0 | $0 |
| Financial Assurance [2] | | | | 0.00 | $0 | $0 | $0 |
| ONE-TIME avoided costs [3] | $350 | 6-Mar-2009 | 29-May-2009 | 1.15 | $20 | $350 | $370 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Notes for AVOIDED costs | Estimated avoided cost to conduct the required inspections of the components of the Stage II vapor recovery system. Date Required is one month prior to the investigation date. Final Date is the date of compliance. | | | | | | |

**Approx. Cost of Compliance** $350

**TOTAL** $370

| | | | |
|---|---|---|---|
| **Screening Date** | 21-Apr-2009 | **Docket No.** 2009-0588-PST-E | **PCW** |
| **Respondent** | Nhat Q. Tran d/b/a Wallisville Market | | *Policy Revision 2 (September 2002)* |
| **Case ID No.** | 37531 | | *PCW Revision October 30, 2008* |
| **Reg. Ent. Reference No.** | RN100916659 | | |
| **Media [Statute]** | Petroleum Storage Tank | | |
| **Enf. Coordinator** | Rajesh Acharya | | |

**Violation Number** 4

**Rule Cite(s)** 30 Tex. Admin. Code § 115.246(1) and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to maintain all required Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, a copy of the California Air Resources Board ("CARB") Executive Order was not available.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

**OR**

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | | |

**Percent** 0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | x | | |

**Percent** 10%

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

**Adjustment** $9,000

$1,000

## Violation Events

Number of Violation Events: 1

53 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 documentation of the violation during the investigation date of April 6, 2009.

## Good Faith Efforts to Comply

**0.0%** Reduction — $0

| | 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 for this violation.

**Violation Subtotal** $1,000

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $4

## Statutory Limit Test

**Violation Final Penalty Total** $1,103

**This violation Final Assessed Penalty (adjusted for limits)** $1,103

# Economic Benefit Worksheet

**Respondent** Nhat Q. Tran d/b/a Wallisville Market
**Case ID No.** 37531
**Reg. Ent. Reference No.** RN100916659
**Media** Petroleum Storage Tank
**Violation No.** 4

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **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 | 6-Apr-2009 | 29-May-2009 | 0.15 | $4 | n/a | $4 |
| 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 maintain Stage II records at the Station. 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 | $500 | TOTAL | $4 |

# Compliance History Report

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN602936437 | Nhat Q. Tran | Classification: AVERAGE | Rating: 5.25 |
| Regulated Entity: | RN100916659 | WALLISVILLE MARKET | Classification: AVERAGE | Site Rating: 5.25 |

ID Number(s):

| | | |
|---|---|---|
| AIR NEW SOURCE PERMITS | ACCOUNT NUMBER | HG6625U |
| PETROLEUM STORAGE TANK REGISTRATION | REGISTRATION | 23505 |

Location: 9711 WALLISVILLE RD, HOUSTON, TX, 77013

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: April 22, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 22, 2004 to April 22, 2009

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, 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 01/20/2005 (292502)
2 11/05/2006 (517960)
3 04/22/2007 (557134)
4 04/17/2009 (742007)

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

Date: 11/05/2006 (517960)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)

Description: 30 Tex. Admin. Code Section 115.246 (7)(A) - Failure to maintain records on-site and make immediately available for review upon request by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction at sites ordinarily manned during business hours.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(1)

Description: Tex. Admin. Code Section 115.244 (1) - Failure to conduct daily inspections of the Stage II vapor recovery system for the defects specified in §115.242(3)(A) - (F), (H), and (K).

Self Report? NO Classification: Moderate

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

Description: Tex. Admin. Code Section 115.244 (3) - Failure to conduct monthly inspections of the components listed in §115.242(3)(J) of this title.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.248(1)

Description: 30 Tex. Admin. Code Section 115.248(1)- Failure to ensure at least one facility representative receive training and instruction in the operation and maintenance of the Stage 11 vapor recovery system by successfully completing a training course approved by the executive director.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)

Description: 30 Tex. Admin. Code Section 115.246(3)- Failure to maintain a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service. the date of repair or replacement, the replacement part manufacturer's information, a general description of the part location in the system (e.g., pump or nozzle number, etc.), and a description of the problem.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

Description: 30 Tex. Admin Code Section 115.246 (1)- Failure to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system and any related components installed at the facility.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)

Description: Tex. Admin. Code Section 115.245 (2)- Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101, Determination of Vapor Space Manifolding of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP-103, Determination of Dynamic Pressure Performance (Dynamic Back-Pressure) of Vapor Recovery Systems at Gasoline Dispensing Facilities, which must be performed at least once every 36 months.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)

Description: 30 Tex. Admin. Code Section 115.242 (9) - Failure to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. These instructions shall, at a minimum, include:
(A) a clear description of how to correctly dispense gasoline using the system:
(B) a warning against attempting to continue to refuel after initial automatic shutoff of the system (an indication that the vehicle fuel tank is full).

Self Report? NO Classification: Moderate

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

Description: 30 Tex. Admin. Code Section 115.242 (3)(G) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including vapor return lines, such components as swivels, anti-recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic backpressure through the line exceeds the value as certified in the approved system's CARB Executive Order(s) or third-party certification.

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 NHAT Q. TRAN DBA WALLISVILLE MARKET; RN100916659** | **§ § § § § §** | **BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY** |

**DEFAULT AND SHUTDOWN ORDER**

**DOCKET NO. 2009-0588-PST-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, Nhat Q. Tran d/b/a Wallisville Market ("Respondent"), to shutdown or remove from service the underground storage tanks ("USTs") at the Wallisville Market station, located at 9711 Wallisville Road, Houston, Harris County, Texas.

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

**FINDINGS OF FACT**

1. Respondent owns and operates three USTs and a convenience store with retail sales of gasoline located at 9711 Wallisville Road, Houston, Harris County, Texas (the "Station").

2. The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. On April 6, 2009, a University of Texas at Arlington's Houston Office Petroleum Storage Tank Program investigator documented that Respondent:

   a. Failed to monitor all USTs at the Station 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 the Station at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total

substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurement at the Station for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day;

b. Failed to conduct effective manual or automatic inventory control procedures for all USTs at the Station;

c. Failed to conduct daily and monthly inspections of the Stage II vapor recovery system at the Station; and

d. Failed to maintain all required Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, a copy of the California Air Resources Board ("CARB") Executive Order was not available

4. The Executive Director recognizes that, on May 29, 2009, Respondent implemented the following corrective measures at the Station:

a. Began conducting proper manual or automatic inventory procedures;

b. Began maintaining Stage II records at the Station; and

c. Began conducting daily and monthly inspections of the Stage II vapor recovery system.

5. 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 Nhat Q. Tran d/b/a Wallisville Market" (the "EDPRP") in the TCEQ Chief Clerk's office on September 3, 2009.

6. By letter dated September 3, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on September 5, 2009, as evidenced by the signature on the card.

7. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

8. By letter dated May 20, 2009, TCEQ provided Respondent with notice of the violations and TCEQ's authority to shut down and remove from service the USTs at the Station if

Respondent failed to correct the release detection violations within 30 days after Respondent's receipt of the notice.

9. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection violations alleged in Finding of Fact No. 3.a. have been corrected.

10. The USTs at the Station do not have release detection as required by 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) and may be releasing petroleum products to the environment. Therefore, conditions at the Station constitute an imminent peril to public health, safety, and welfare.

## CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondent's USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Respondent failed to monitor all USTs at the Station 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 the Station at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurement at the Station for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 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).

3. As evidenced by Finding of Fact No. 3.b., Respondent failed to conduct effective manual or automatic inventory control procedures for all USTs at the Station, in violation of 30 TEX. ADMIN. CODE § 334.48(c).

4. As evidenced by Finding of Fact No. 3.c., Respondent failed to conduct daily and monthly inspections of the Stage II vapor recovery system at the Station, in violation of 30 TEX. ADMIN. CODE § 115.244(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b).

5. As evidenced by Finding of Fact No. 3.d., Respondent failed to maintain all required Stage II records at the Station and make them immediately available for review upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b).

6. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

7. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer, 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 Respondent and assess the penalty recommended by the Executive Director.

8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Water Code and the Texas Health & Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

9. An administrative penalty in the amount of seven thousand seven hundred twenty dollars ($7,720.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

10. As evidenced by Findings of Fact Nos. 8 and 9, Respondent failed to correct documented violations of Commission release detection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the Station.

11. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and overfill protection for tanks, corrosion protection for tanks and piping, and/or acceptable financial assurance.

12. 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.

13. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.

14. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 3, 5, 6 and 7, and Conclusions of Law Nos. 2 through 7.

15. As evidenced by Findings of Fact Nos. 9 and 10, current conditions at the Station constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

## ORDERING PROVISIONS

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Station:

    a. Cease dispensing fuel from the USTs;

    b. Cease receiving deliveries of regulated substances into the USTs;

    c. Padlock the dispensers;

    d. Empty the USTs of all regulated substances, in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and

    e. Temporarily remove the USTs from service, in accordance with 30 TEX. ADMIN. CODE § 334.54.

2. Respondent's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provisions Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the violations noted in Finding of Fact No. 3.a. and Conclusion of Law No. 2 have been corrected.

3. If Respondent elects to permanently remove from service any portion of the UST system at the Station, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

    Petroleum Storage Tank Registration Team, MC 138
    Texas Commission on Environmental Quality
    P.O. Box 13087
    Austin, Texas 78711-3087

4. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent shall cease accepting deliveries of fuel into the USTs at the Station until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.

5. Within 10 days after the effective date of this Order, Respondent shall send her UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e. and 5. The written report shall include detailed supporting documentation such as photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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."

The certified written report and supporting documentation shall be submitted to:

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

and

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

7. Respondent is assessed an administrative penalty in the amount of seven thousand seven hundred twenty dollars ($7,720.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order resolve only the violations set forth in this Order. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here.

8. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Nhat Q. Tran d/b/a Wallisville Market; Docket No. 2009-0588-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

9. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall:

   a. Implement a release detection method and begin conducting volume measurement and reconciliation of inventory control records for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.50; and

   b. Obtain a new fuel delivery certificate from the TCEQ.

10. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Station where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).

11. Within 10 days of resuming retail sales of gasoline at the Station, Respondent shall submit written certification as described below, and include detailed supporting documentation such as photographs, receipts, and/or other records, demonstrating compliance with Ordering Provisions Nos. 9 and 10. The written certification shall be notarized by a State of Texas Notary Public and shall 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 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 fines and imprisonment."

   The written certification and supporting documentation shall be submitted to:

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

and

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

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

13. The provisions of this Order shall apply to and be binding upon Respondent, and Respondent is ordered to give notice of this Order to all personnel who maintain day-to-day control of the USTs at the Station.

14. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent is noncompliant with or in violation of any of the terms and conditions set forth in this Order.

15. This Order shall terminate five years from its effective date or when Respondent demonstrates to the satisfaction of the Executive Director all of the violations noted herein have been corrected, whichever is later.

16. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

# S I G N A T U R E  P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

For the Commission

**AFFIDAVIT OF GARY K. SHIU**

STATE OF TEXAS §
§
COUNTY OF HARRIS §

"My name is Gary K. Shiu. 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 Nhat Q. Tran d/b/a Wallisville Market" (the "EDPRP") was filed with the Office of the Chief Clerk on September 3, 2009.

The EDPRP was mailed to Respondent at her last known address on September 3, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on September 5, 2009, as evidenced by the signature on the card.

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

By letter dated May 20, 2009, sent via first class mail and certified mail, return receipt requested, article no. 9171082133393489694680, the Texas Commission on Environmental Quality provided Respondent with notice of the TCEQ's intent to order the USTs at the Station shut down and removed from service if the violations pertaining to release detection were not corrected within 30 days of Respondent's receipt of the letter.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the violations noted during the April 6, 2009, investigation."

Gary K. Shiu, Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 13th day of August, A.D., 2010.

NOTARY PUBLIC STATE OF TEXAS
KATHERINE S. TAYLOR
Notary Public, State of Texas
My Commission Expires
JANUARY 15, 2013

Notary Signature