

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1290-PST-E **TCEQ ID:** RN101536662 **CASE NO.:** 40159  
**RESPONDENT NAME:** NOGALES PRODUCE, INC. dba Nogales Produce

<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 AND 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
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Nogales Produce, 8220 Forney Road, Dallas, Dallas County</p> <p><b>TYPE OF OPERATION:</b> Produce distribution operation with an underground storage tank</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on November 29, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Greg Saldivar, President, NOGALES PRODUCE, INC., 8220 Forney Road, Dallas, Texas 75227  Mr. Albert Rodriguez, General Manager, Nogales Produce, 8220 Forney Road, Dallas, Texas 75227  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 24, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 30, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failed to provide an amended underground storage tank ("UST") registration to the agency for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not amended to reflect the correct owner and operator information [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>2) Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the Respondent did not renew the delivery certificate after the ownership change on March 21, 2006 [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</p> <p>3) 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, five fuel deliveries were accepted without a delivery certificate [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>4) Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically,</p>	<p><b>Total Assessed:</b> \$12,193</p> <p><b>Total Deferred:</b> \$2,438  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$9,755</p> <p><b>Compliance History Classification:</b>                  Person/CN - Average                  Site/RN - Average</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 the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Amended the UST registration to reflect the correct owner and operator information on August 16, 2010;</p> <p>b. Submitted a properly completed UST registration and self-certification form and obtained a valid TCEQ fuel delivery certificate which became effective on August 16, 2010;</p> <p>c. Successfully conducted the line leak detector test on August 16, 2010;</p> <p>d. Cleaned the submersible pump container and began conducting bimonthly inspections of the sump, manways, overfill containers associated with the UST system on July 30, 2010;</p> <p>e. Replaced the spill bucket on July 30, 2010; and</p> <p>f. Submitted documentation verifying that the shear valve was installed and securely anchored at the base of the dispenser on July 30, 2010.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, begin recording inventory volume measurement and monthly reconciliation of inventory control records; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

<p>the line leak detectors had not been performance tested annually [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].</p> <p>5) Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent 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> <p>6) 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(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>7) Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight. Specifically, there was liquid in the submersible pump container [30 TEX. ADMIN. CODE § 334.42(i)].</p> <p>8) Failed to ensure that all spill and overflow prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with manufacturers' specifications. Specifically, the spill bucket was cracked [30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2)].</p> <p>9) Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser. Specifically, the shear valve was not installed at the base of the dispenser [30 TEX. ADMIN. CODE § 334.45(c)(3)(A)].</p>		
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Additional ID No(s): PST Reg. 47849





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	2-Aug-2010	<b>Screening</b>	4-Aug-2010	<b>EPA Due</b>	
	<b>PCW</b>	10-Aug-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	NOGALES PRODUCE, INC. dba Nogales Produce
<b>Reg. Ent. Ref. No.</b>	RN101536662
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40159	<b>No. of Violations</b>	6
<b>Docket No.</b>	2010-1290-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Judy Kluge
		<b>EC's Team</b>	Enforcement Team 6
<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>	\$13,000
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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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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**Notes** No adjustment for Compliance History.

<b>Culpability</b>	No	0.0% 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 Total Adjustments</b>	<b>Subtotal 5</b>	\$1,500
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$762  
 Approx. Cost of Compliance \$3,175  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$11,500
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	6.0%	<b>Adjustment</b>	\$693
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Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes** Enhancement for capturing the avoided cost of compliance associated with violation nos. 1, 3, and 4.

<b>Final Penalty Amount</b>	\$12,193
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$12,193
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$2,438
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes** Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$9,755
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Screening Date 4-Aug-2010

Docket No. 2010-1290-PST-E

PCW

Respondent NOGALES PRODUCE, INC. dba Nogales Produce

Policy Revision 2 (September 2002)

Case ID No. 40159

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101536662

Media [Statute] Petroleum Storage Tank

Inf. Coordinator Judy Kluge

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	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) 0%

>> 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

No adjustment for Compliance History.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 4-Aug-2010

Docket No. 2010-1290-PST-E

PCW

Respondent NOGALES PRODUCE, INC. dba Nogales Produce

Policy Revision 2 (September 2002)

Case ID No. 40159

PCW Revision October 30, 2006

Reg. Ent. Reference No. RN101536662

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code §§ 334.7(d)(3), 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description

Failed to provide an amended UST registration to the agency for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not amended to reflect the correct owner and operator information. Also failed to timely renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the Respondent did not renew the delivery certificate after the ownership change on March 21, 2006.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	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 5

1609 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

mark only one with an x

Violation Base Penalty \$5,000

Five annual events are recommended based on documentation of the violation during the June 24, 2010 investigation.

Good Faith Efforts to Comply

10.0% Reduction

\$500

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

Notes

The Respondent came into compliance on August 16, 2010 after the notice of enforcement dated July 30, 2010.

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$504

Violation Final Penalty Total \$4,771

This violation Final Assessed Penalty (adjusted for limits) \$4,771

# Economic Benefit Worksheet

**Respondent:** NOGALES PRODUCE, INC. dba Nogales Produce  
**Case ID No.:** 40159  
**Reg. Ent. Reference No.:** RN101536662  
**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)	\$100	24-Jun-2010	16-Aug-2010	0.15	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration and obtain a current TCEQ delivery certificate. The date required is the investigation date and the final date is the compliance date.

### 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]	\$400	21-Mar-2006	24-Jun-2010	5.18	\$104	\$400	\$504
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The estimated avoided cost (\$100 per full year) to accurately prepare and submit an updated UST registration and obtain a TCEQ delivery certificate. The date required is the March 21, 2006 date of ownership change and the final date is the investigation date.

Approx. Cost of Compliance

\$500

**TOTAL**

\$504

Screening Date 4-Aug-2010

Docket No. 2010-1290-PST-E

PCW

Respondent NOGALES PRODUCE, INC. dba Nogales Produce

Policy Revision 2 (September 2002)

Case ID No. 40159

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101536662

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

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, five fuel deliveries were accepted without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5%
Potential			X	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				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 5 Number of violation days 5

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$2,500

Five single events (one event per delivery) are recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$250

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes

The Respondent came into compliance on August 16, 2010 after the notice of enforcement dated July 30, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$2,386

This violation Final Assessed Penalty (adjusted for limits) \$2,386

# Economic Benefit Worksheet

**Respondent:** NOGALES PRODUCE, INC. dba Nogales Produce

**Case ID No.:** 40159

**Reg. Ent. Reference No.:** RN101536662

**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
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**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. 1.

**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 4-Aug-2010

Docket No. 2010-1290-PST-E

PCW

Respondent NOGALES PRODUCE, INC. dba Nogales Produce

Policy Revision 2 (September 2002)

Case ID No. 40159

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101536662

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.50(b)(2)(A)(i)(III), (d)(1)(B)(ii); and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent 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	Harm		
	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

41 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 based on documentation of the violation during the June 24, 2010 investigation to the August 4, 2010 screening 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

Statutory Limit Test

Estimated EB Amount \$146

Violation Final Penalty Total \$2,651

This violation Final Assessed Penalty (adjusted for limits) \$2,651

# Economic Benefit Worksheet

**Respondent:** NOGALES PRODUCE, INC. dba Nogales Produce  
**Case ID No.:** 40159  
**Reg. Ent. Reference No.:** RN101536662  
**Media Violation No.:** 3  
**Media:** Petroleum Storage Tank

Percent Interest	Years of Depreciation
5.0	15

**Item Cost:**    **Date Required:**    **Final Date:**    **Yrs Interest Saved:**    **Onetime Costs:**    **EB Amount:**  
 No./columns of \$

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0
Buildings				0.00	\$0	\$0
Other (as needed)				0.00	\$0	\$0
Engineering/construction				0.00	\$0	\$0
Land				0.00	n/a	\$0
Record Keeping System				0.00	\$0	n/a
Training/Sampling				0.00	\$0	n/a
Remediation/Disposal				0.00	\$0	n/a
Permit Costs				0.00	\$0	n/a
Other (as needed)	\$1,500	24-Jun-2010	29-Apr-2011	0.85	\$63	n/a

**Notes for DELAYED costs**

The estimated cost of recording daily inventory volume measurement and monthly reconciliation of inventory control records. The date required is the investigation date and the final date is the expected 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
Personnel				0.00	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0
Supplies/equipment				0.00	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0
ONE-TIME avoided costs [3]	\$75	24-Jun-2009	16-Aug-2010	2.06	\$8	\$75
Other (as needed)				0.00	\$0	\$0

**Notes for AVOIDED costs**

Estimated avoided cost for conducting the line leak detector performance test. The date required is one year prior to the investigation date and the final date is the compliance date.

Approx. Cost of Compliance

\$1,575

**TOTAL**

\$146

Screening Date 4-Aug-2010

Docket No. 2010-1290-PST-E

PCW

Respondent NOGALES PRODUCE, INC. dba Nogales Produce

Policy Revision 2 (September 2002)

Case ID No. 40159

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101536662

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.42(l)

Violation Description

Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight. Specifically, there was liquid in the submersible pump container.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		X		

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				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 Number of violation days: 36

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 June 24, 2010 investigation to the July 30, 2010 compliance date.

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 on July 30, 2010 before the notice of enforcement dated July 30, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$106

Violation Final Penalty Total \$795

This violation Final Assessed Penalty (adjusted for limits) \$795

# Economic Benefit Worksheet

**Respondent:** NOGALES PRODUCE, INC. dba Nogales Produce  
**Case ID No.:** 40159  
**Reg. Ent. Reference No.:** RN101536662  
**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)				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]	\$100	25-Apr-2010	30-Jul-2010	1.18	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the sumps, manways, overfill containers or catchment basins. The date required is 60 days before the investigation and the final date is the compliance date.

Approx. Cost of Compliance

\$100

**TOTAL**

\$106

Screening Date 4-Aug-2010

Docket No. 2010-1290-PST-E

PCW

Respondent NOGALES PRODUCE, INC. dba Nogales Produce

Policy Revision 2 (September 2002)

Case ID No. 40159

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101536662

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 334.51(a)(6) and Tex. Water Code § 26.3475(c)(2)

Violation Description

Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with manufacturers' specifications. Specifically, the spill bucket was cracked.

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

36 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 June 24, 2010 investigation to the July 30, 2010 compliance date.

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 on July 30, 2010 before the notice of enforcement dated July 30, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$795

This violation Final Assessed Penalty (adjusted for limits) \$795

# Economic Benefit Worksheet

**Respondent:** NOGALES PRODUCE, INC. dba Nogales Produce  
**Case ID No.:** 40159  
**Reg. Ent. Reference No.:** RN101536662  
**Media:** Petroleum Storage Tank  
**Violation No.:** 5

Percent Interest	Years of Depreciation
5.0	15

**Item Cost:**   **Date Required:**   **Final Date:**   **Yrs:**   **Interest Saved:**   **Onetime Costs:**   **EB Amount:**  
**Item Description:** 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)	\$500	24-Jun-2010	30-Jul-2010	0.10	\$2	n/a	\$2

**Notes for DELAYED costs**

The estimated cost of replacing the spill bucket. The date required is the investigation date and the final date is the compliance date.

**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**

\$2

Screening Date 4-Aug-2010

Docket No. 2010-1290-PST-E

PCW

Respondent NOGALES PRODUCE, INC. dba Nogales Produce

Policy Revision 2 (September 2002)

Case ID No. 40159

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101536662

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 6

Rule Cite(s)

30-Tex. Admin. Code § 334.45(c)(3)(A)

Violation Description

Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser. Specifically, the shear valve was not installed at the base of the dispenser.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	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

1

36

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 June 24, 2010 investigation to the July 30, 2010 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes

The Respondent came into compliance on July 30, 2010 before the notice of enforcement dated July 30, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$795

This violation Final Assessed Penalty (adjusted for limits) \$795

# Economic Benefit Worksheet

**Respondent:** NOGALES PRODUCE, INC. dba Nogales Produce

**Case ID No.:** 40159

**Reg. Ent. Reference No.:** RN101536662

**Media:** Petroleum Storage Tank

**Violation No.:** 6

Percent Interest	Years of Depreciation
5.0	15

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

**Item Description:** No commas or \$

**Delayed Costs**

Equipment	\$500	24-Jun-2010	30-Jul-2010	0.10	\$0	\$3	\$3
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to anchor the shear valve. The date required is the investigation date and the 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**

\$3

# Compliance History Report

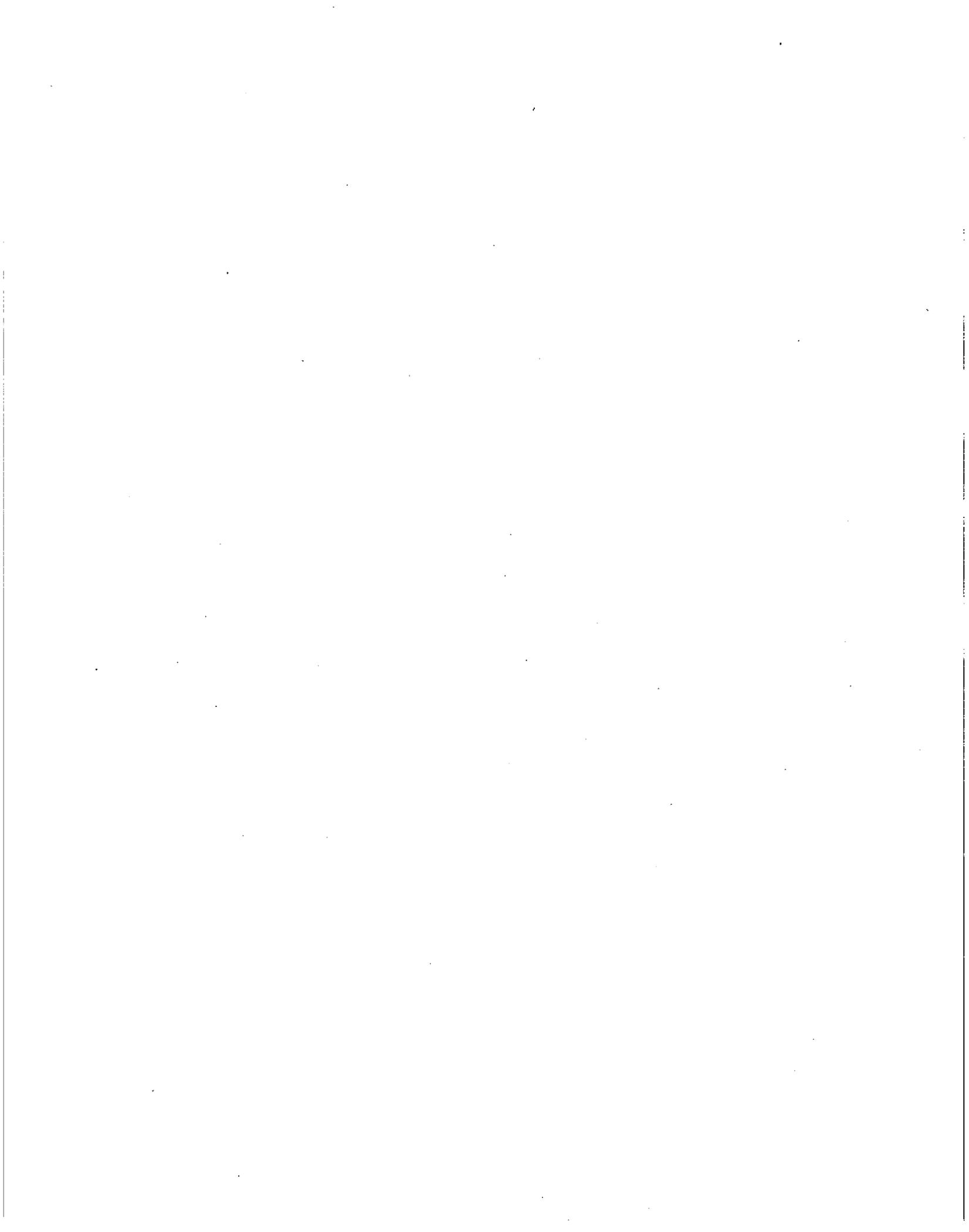
Customer/Respondent/Owner-Operator: CN602245417 NOGALES PRODUCE, INC. Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN101536662 NOGALES PRODUCE Classification: AVERAGE Site Rating: 3.01  
BY DEFAULT  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 47849  
Location: 8220 FORNEY RD, DALLAS, TX, 75227  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: August 09, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 06, 2005 to August 06, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Judy Kluge Phone: (817) 588-5825

## 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? Nogales Produce, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s)? Selagon Real Estate Holdings Group, LTD.
5. When did the change(s) in owner or operator occur? 03/21/2006
6. Rating Date: 9/1/2009 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 07/30/2010 (829229)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - 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  
NOGALES PRODUCE, INC. DBA  
NOGALES PRODUCE  
RN101536662

§ BEFORE THE  
§ TEXAS COMMISSION ON  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2010-1290-PST-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding NOGALES PRODUCE, INC. dba Nogales Produce ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a produce distribution operation with an underground storage tank system ("UST") at 8220 Forney Road in Dallas, Dallas County, Texas (the "Facility").
2. The Respondent's one underground storage tank ("UST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 4, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Twelve Thousand One Hundred Ninety-Three Dollars (\$12,193) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Nine Thousand Seven Hundred Fifty-Five Dollars (\$9,755) of the administrative penalty and Two Thousand Four Hundred Thirty-Eight Dollars (\$2,438) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
  - a. Amended the UST registration to reflect the correct owner and operator information on August 16, 2010;
  - b. Submitted a properly completed UST registration and self-certification form and obtained a valid TCEQ fuel delivery certificate which became effective on August 16, 2010;
  - c. Successfully conducted the line leak detector test on August 16, 2010;
  - d. Cleaned the submersible pump container and began conducting bimonthly inspections of the sump, manways, overfill containers associated with the UST system on July 30, 2010;
  - e. Replaced the spill bucket on July 30, 2010; and
  - f. Submitted documentation verifying that the shear valve was installed and securely anchored at the base of the dispenser on July 30, 2010.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide an amended UST registration to the agency for any change or additional information regarding the UST within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on June 24, 2010. Specifically, the registration was not amended to reflect the correct owner and operator information.
2. Failed to timely renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), as documented during an investigation conducted on June 24, 2010. Specifically, the Respondent did not renew the delivery certificate after the ownership change on March 21, 2006.
3. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on June 24, 2010. Specifically, five fuel deliveries were accepted without a delivery certificate.
4. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on June 24, 2010. Specifically, the line leak detectors had not been performance tested annually.
5. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on June 24, 2010.
6. Failed to record inventory volume measurement 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(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on June 24, 2010.
7. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid tight, in violation of 30 TEX. ADMIN. CODE § 334.42(i), as documented during an investigation conducted on June 24, 2010. Specifically, there was liquid in the submersible pump container.
8. Failed to ensure that all spill and overflow prevention devices are maintained in good operating condition and that such devices are inspected and serviced in accordance with

manufacturers' specifications, in violation of 30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2), as documented during an investigation conducted on June 24, 2010. Specifically, the spill bucket was cracked.

9. Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser, in violation of 30 TEX. ADMIN. CODE § 334.45(c)(3)(A), as documented during an investigation conducted on June 24, 2010. Specifically, the shear valve was not installed at the base of the dispenser.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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 requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: NOGALES PRODUCE, INC. dba Nogales Produce, Docket No. 2010-1290-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, begin recording inventory volume measurement and monthly reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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 fines and imprisonment for knowing violations."

The certification shall be submitted 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:

Waste Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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 the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent 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 under this Agreed Order.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

NOGALES PRODUCE, INC. dba Nogales Produce  
DOCKET NO. 2010-1290-PST-E  
Page 7

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Jole Srdlin*  
For the Executive Director

11/22/2010  
Date

I, the undersigned, have read and understand the attached Agreed Order. 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
  - Greater scrutiny of any permit applications submitted;
  - 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;
  - Automatic referral to the Attorney General's Office of any future enforcement actions;
  - and
  - TCEQ seeking other relief as authorized by law.
- In addition, any falsification of any compliance documents may result in criminal prosecution.

*[Signature]*  
Signature

11-12-2010  
Date

KREG Saldivar  
Name (Printed or typed)  
Authorized Representative of  
NOGALES PRODUCE, INC. dba Nogales Produce

owner/President  
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

