

Executive Summary – Enforcement Matter – Case No. 39681
Phuong Cong Huynh d/b/a P&H FOOD 2;
Tam Mai d/b/a P & H Food 2; and Le Hein d/b/a P & H Food 2
RN101434199
Docket No. 2010-0773-PST-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

5902 Fulton Street, Houston, Harris County

Type of Operation:

conveniences store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: August 19, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$4,069

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$4,069

Compliance History Classifications:

Person/CN – Average (All 3 Respondents)

Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 39681
Phuong Cong Huynh d/b/a P&H FOOD 2;
Tam Mai d/b/a P & H Food 2; and Le Hein d/b/a P & H Food 2
RN101434199
Docket No. 2010-0773-PST-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: April 23, 2010
Date(s) of NOV(s): N/A
Date(s) of NOE(s): May 5, 2010

Violation Information

Failed to verify proper operation of the Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Action(s) Completed:

On April 29, 2011, the Stage II equipment was tested with passing results.

Technical Requirements:

1. The Station's UST fuel delivery certificate is revoked immediately. Respondents shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ. Respondents may submit an application for a new fuel delivery certificate only after Respondents have complied with all of the requirements of this Order.
2. Within 10 days, Respondents shall send the Station's UST fuel delivery to TCEQ.

Litigation Information

Date Petition(s) Filed: September 17, 2010 (no service); October 26, 2010 (no service); December 1, 2010; June 22, 2011
Date(s) Green Card(s) Signed: December 4, 2010 (Huynh); June 24, 2011 (Mai), June 27, 2011 (Hein), and Unclaimed (Huynh).
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
TCEQ Enforcement Coordinator: Clinton Sims, Waste Enforcement Section, (512) 239-6933
TCEQ Regional Contact: Nicole Bealle, Houston Regional Office, (713) 767- 3623

Respondents:

Phuong Cong Huynh, Owner/Operator, P&H Food 2, 5902 Fulton Street, Houston, Texas 77009;
Phuong Cong Huynh, Owner/Operator, P&H Food 2, 25723 Clear Springs Way, Spring, Texas 77373;
Tam Mai, Owner/Operator, P&H Food 2, 5902 Fulton Street, Houston, Texas 77009;
Le Hein, Owner/Operator, P&H Food 2, 5902 Fulton Street, Houston, Texas 77009

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	10-May-2010			
	PCW	13-Aug-2010	Screening	12-May-2010	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Phuong Cong Huynh d/b/a P & H Food 2, Tam Mai d/b/a P & H Food 2, and Le Hein d/b/a P & H Food 2
Reg. Ent. Ref. No.	RN101434199
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39681	No. of Violations	1
Docket No.	2010-0773-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Clinton Sims
		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	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7 \$500
Notes	Enhancement due to one prior order containing a denial of liability.	
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		Subtotal 6 \$0
<small>Total EB Amounts</small>	\$1,069	<small>*Capped at the Total EB \$ Amount</small>
<small>Approx. Cost of Compliance</small>	\$1,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	35.6%	Adjustment	\$1,069
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>			
Notes	Recommended enhancement to capture the avoided cost of compliance associated with the violation.		
	Final Penalty Amount	\$4,069	

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,069
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DEFERRAL	0.0% Reduction	Adjustment	\$0
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			
Notes	Deferral not offered for non-expedited settlement.		

PAYABLE PENALTY		\$4,069
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Screening Date 12-May-2010

Docket No. 2010-0773-PST-E

PCW

Respondent Phuong Cong Huynh d/b/a P & H Food 2, Tam Mai d/b/a

Policy Revision 2 (September 2002)

Case ID No. 39681

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101434199

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Clinton Sims

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)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> 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 due to one prior order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date	12-May-2010	Docket No.	2010-0773-PST-E	PCW
Respondent	Phuong Cong Huynh d/b/a P & H Food 2, Tam Mai d/b/a P & H Foc			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39681			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN101434199			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Clinton Sims			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 115.245(2) and and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment was not conducted by the due date of November 5, 2009.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.				
					Adjustment \$7,500

Violation Events

Number of Violation Events	1	169	Number of violation days
<i>mark only one with an x</i>	daily		
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual	x	
	single event		
			Violation Base Penalty \$2,500
One annual event is recommended for the period preceding the April 23, 2010 investigation.			

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 **Statutory Limit Test**

Estimated EB Amount	\$1,069	Violation Final Penalty Total	\$4,069
		This violation Final Assessed Penalty (adjusted for limits)	\$4,069

Economic Benefit Worksheet

Respondent Phuong Cong Huynh d/b/a P & H Food 2, Tam Mai d/b/a P & H Food 2, and Le Hein d/b/a P & H Food 2
Case ID No. 39681
Reg. Ent. Reference No. RN101434199
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	5-Nov-2009	23-Apr-2010	1.38	\$69	\$1,000	\$1,069
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the testing. The Date Required is the test due date and the Final Date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,069

Compliance History

Customer/Respondent/Owner-Operator: CN600744965 HUYNH, PHUONG CONG Classification: AVERAGE Rating: 41.00
 Regulated Entity: RN101434199 P & H FOOD 2 Classification: AVERAGE Site Rating: 41.00
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 69591
 Location: 5902 FULTON ST, HOUSTON, TX, 77009
 TCEQ Region: REGION 12 - HOUSTON
 Date Compliance History Prepared: June 16, 2011
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: June 16, 2006 to June 16, 2011
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
 Name: Clinton Sims Phone: (512) 239-6933

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? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR NGUYEN, LINH
5. When did the change(s) in owner or operator occur? 04/10/2010
6. Rating Date: 9/1/2010 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.
 Effective Date: 06/29/2007 ADMINORDER 2006-1803-PST-E
 Classification: Major
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
 30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(ii)
 Description: 30 Tex. Admin. Code Section 334.50(b)(2)(A)(ii) - Failure to have each pressurized line tested or monitored for releases in accordance with at least one of the following methods: annual piping tightness test; or one or more of the release detection methods prescribed in 30 Tex. Admin. Code '334.50, subsections (d)(5)
 Classification: Major
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
 30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
 Description: 30 Tex. Admin. Code Section 334.50(b)(1)(A) - Failure to provide proper release detection for UST systems.
 Classification: Moderate
 Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
 30 TAC Chapter 37, SubChapter I 37.815(b)
 Description: 30 TAC 37.815(a)-Owners or operators of petroleum underground storage tanks (USTs) must demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs
- 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 | 09/18/2006 | (512581) |
| 2 | 09/27/2006 | (514131) |
| 3 | 08/20/2009 | (766164) |
| 4 | 05/05/2010 | (800474) |
- 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

Compliance History

Customer/Respondent/Owner-Operator: CN603809872 MAI, TAM VAN Classification: AVERAGE Rating: 41.00
 Regulated Entity: RN101434199 P & H FOOD 2 Classification: AVERAGE Site Rating: 41.00
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 69591
 Location: 5902 FULTON ST, HOUSTON, TX, 77009
 TCEQ Region: REGION 12 - HOUSTON
 Date Compliance History Prepared: June 16, 2011
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: June 16, 2006 to June 16, 2011
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
 Name: Clinton Sims Phone: (512) 239-6933

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? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR NGUYEN, LINH
5. When did the change(s) in owner or operator occur? 04/10/2010
6. Rating Date: 9/1/2010 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.
 Effective Date: 06/29/2007 ADMINORDER 2006-1803-PST-E
 Classification: Major
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
 30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(ii)
 Description: 30 Tex. Admin. Code Section 334.50(b)(2)(A)(ii) - Failure to have each pressurized line tested or monitored for releases in accordance with at least one of the following methods: annual piping tightness test; or one or more of the release detection methods prescribed in 30 Tex. Admin. Code '334.50, subsections (d)(5)
 Classification: Major
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
 30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)
 Description: 30 Tex. Admin. Code Section 334.50(b)(1)(A) - Failure to provide proper release detection for UST systems.
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- 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 | 09/18/2006 | (512581) |
| 2 | 09/27/2006 | (514131) |
| 3 | 08/20/2009 | (766164) |
| 4 | 05/05/2010 | (800474) |
- 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

Compliance History

Customer/Respondent/Owner-Operator: CN603809864 LE HEIN Classification: AVERAGE Rating: 41.00
 Regulated Entity: RN101434199 P & H FOOD 2 Classification: AVERAGE Site Rating: 41.00
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 69591
 Location: 5902 FULTON ST, HOUSTON, TX, 77009
 TCEQ Region: REGION 12 - HOUSTON
 Date Compliance History Prepared: June 16, 2011
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: June 16, 2006 to June 16, 2011
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3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR NGUYEN, LINH
5. When did the change(s) in owner or operator occur? 04/10/2010
6. Rating Date: 9/1/2010 Repeat Violator: NO

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 30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(ii)
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 Classification: Major
 Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
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 Description: 30 Tex. Admin. Code Section 334.50(b)(1)(A) - Failure to provide proper release detection for UST systems.
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 Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)
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 Description: 30 TAC 37.815(a)-Owners or operators of petroleum underground storage tanks (USTs) must demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs
- 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 | 09/18/2006 | (512581) |
| 2 | 09/27/2006 | (514131) |
| 3 | 08/20/2009 | (766164) |
| 4 | 05/05/2010 | (800474) |
- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
PHUONG CONG HUYNH D/B/A	§	TEXAS COMMISSION ON
P & H FOOD 2;	§	
TAM MAI D/B/A P & H FOOD 2;	§	
AND LE HEIN D/B/A P & H FOOD 2;	§	ENVIRONMENTAL QUALITY
RN101434199	§	

DEFAULT ORDER

DOCKET NO. 2010-0773-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Third Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and revocation of the station's delivery certificate. The respondents made the subject of this Order are Phuong Cong Huynh d/b/a P & H Food 2; Tam Mai d/b/a P & H Food 2; and Le Hein d/b/a P & H Food 2 (collectively referred to as "Respondents").

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

FINDINGS OF FACT

1. Respondents own and/or operate, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank system ("UST") and a convenience store with retail sales of gasoline located at 5902 Fulton Street in Houston, Harris County, Texas (the "Station"). 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).
2. During an investigation conducted on April 23, 2010, a University of Texas at Arlington Stage II/PST Program investigator documented that Respondents failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, annual testing of the Stage II equipment was not conducted by the due date of November 5, 2009.
3. Respondents received notice of the violation on or about May 8, 2010.
4. The Executive Director recognizes that Respondents successfully passed the TXP 102 Stage II equipment test on April 29, 2011.

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 Linh Nguyen d/b/a P & H Food 2" (the "EDPRPP") in the TCEQ Chief Clerk's office on September 17, 2010. Service was unsuccessful.
6. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Linh Nguyen d/b/a P & H Food 2 and Huynh Phuong Cong d/b/a P & H Food 2" (the "EDFARP") in the TCEQ Chief Clerk's office on October 26, 2010. Service was unsuccessful.
7. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Linh Nguyen¹ d/b/a P & H Food 2 and Huynh Phuong Cong d/b/a P & H Food 2" (the "EDSARP") in the TCEQ Chief Clerk's office on December 1, 2010.
8. By letter dated December 1, 2010, sent to Linh Nguyen's last known address and Huynh Phuong Cong's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent, Linh Nguyen and Huynh Phuong Cong, with notice of the EDSARP. According to the return receipt "green card," Huynh Phuong Cong received notice of the EDSARP on December 4, 2010, as evidenced by the signature on the card. Service on Linh Nguyen was unsuccessful.
9. The Executive Director filed the "Executive Director's Third Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Phuong Cong Huynh² d/b/a P & H Food 2, Tam Mai d/b/a P & H Food 2, and Le Hein d/b/a P & H Food 2" (the "EDTARP") in the TCEQ Chief Clerk's office on June 22, 2011.
10. By letter dated June 22, 2011, sent to each Respondents' last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDTARP. According to the return receipt "green cards," Tam Mai and Le Hein received notice of the EDTARP on June 24, 2011 and June 27, 2011, respectively, as evidenced by the signatures on the cards. The EDTARP sent by certified mail to Phuong Cong Huynh was returned "unclaimed." The first class mail sent to Phuong Cong Huynh has not been returned, indicating that Phuong Cong Huynh received notice of the EDTARP.
11. More than 20 days have elapsed since each Respondent received notice of the EDTARP provided by the Executive Director. Respondents failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

¹ Linh Nguyen, former operator of the station, was dropped from this case after the EDSARP was filed.

² Huynh Phuong Cong was corrected to Phuong Cong Huynh.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents 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. 2, Respondents failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE 382.085(b).
3. As evidenced by Findings of Fact Nos. 9 and 10, the Executive Director timely served Tam Mai and Le Hein with proper notice of the EDTARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Findings of Fact Nos. 9 and 10, the Executive Director timely served Phuong Cong Huynh with proper notice of the EDTARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 11, Respondents 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 Respondents and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of four thousand sixty-nine dollars (\$4,069.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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.
9. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Station's UST fuel delivery certificate if the Commission finds that good cause exists.
10. Good cause for revocation of the Station's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 9 through 11 and Conclusions of Law Nos. 2 through 5.

ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty in the amount of four thousand sixty-nine dollars (\$4,069.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the

terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. 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 "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Phuong Cong Huynh d/b/a P & H Food 2; Tam Mai d/b/a P & H Food 2; and Le Hein d/b/a P & H Food 2; Docket No. 2010-0773-PST-E" to:

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

3. The Station's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondents shall cease accepting fuel 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. Respondents may submit an application for a new fuel delivery certificate only after Respondents have complied with all of the requirements of this Order.
4. Within 10 days after the effective date of this Order, Respondents shall send the Station's 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

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
7. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

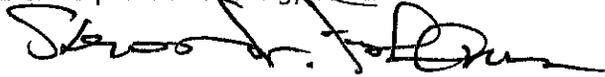
9. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

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



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 4th day of August, A.D. 2011.



Notary Signature

