

**Executive Summary – Enforcement Matter – Case No. 40631  
Nam Bui d/b/a Ball Park Shell  
RN104533989  
Docket No. 2010-1782-PST-E**

**Order Type:**

Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

2002 Runnels Street, Houston, Harris County

**Type of Operation:**

convenience store

**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:** September 16, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$10,341

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$716

**Total Due to General Revenue:** \$9,625

Payment Plan: 35 payments of \$275 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average

Site/RN – Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** June 24, 2010; October 22, 2010  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** October 22, 2010

***Violation Information***

1. Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed underground storage tank (“UST”) registration and self-certification form at least 30 days before the expiration date [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
3. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide release detection for the piping associated with the USTs [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2), and TEX. WATER CODE § 26.3475(a) and (c)(1)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

1. Submitted an updated registration and obtained a TCEQ delivery certificate in November 2010;
2. Implemented a release detection method for all USTs at the Facility and successfully conducted the annual piping tightness test; and
3. Submitted documentation indicating that an annual piping tightness test with passing results has been conducted.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** May 20, 2011  
**Date Answer(s) Filed:** June 22, 2011  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** August 29, 2011

**Executive Summary – Enforcement Matter – Case No. 40631**  
**Nam Bui d/b/a Ball Park Shell**  
**RN104533989**  
**Docket No. 2010-1782-PST-E**

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***Contact Information***

**TCEQ Attorneys:** Kari L. Gilbreth, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** Clinton Sims, Waste Enforcement Section, (512) 239- 6933

**TCEQ Regional Contact:** Nicole Bealle, Houston Regional Office, (713) 767-3623

**Respondent:** Nam Bui, Owner, Ball Park Shell, 2002 Runnels Street, Houston, TX 77003

**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	27-Oct-2010	<b>Screening</b>	27-Oct-2010	<b>EPA Due</b>	
	<b>PCW</b>	15-Mar-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>						
<b>Respondent</b>	Nam Bui d/b/a Ball Park Shell					
<b>Reg. Ent. Ref. No.</b>	RN104533989					
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Major			

<b>CASE INFORMATION</b>						
<b>Enf./Case ID No.</b>	40631	<b>No. of Violations</b>	3			
<b>Docket No.</b>	2010-1782-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>	Clinton Sims			
		<b>EC's Team</b>	Enforcement Team 5			
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000			

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$11,000
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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>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$220
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<b>Notes</b>	Enhancement for one NOV with dissimilar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$1,100
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$226	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,800	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$10,120
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	2.2%	<b>Adjustment</b>	\$221
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement for the avoided cost of compliance associated with violation nos. 1 and 3.
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<b>Final Penalty Amount</b>	\$10,341
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$10,341
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$10,341
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**Screening Date** 27-Oct-2010

**Docket No.** 2010-1782-PST-E

**PCW**

**Respondent** Nam Bui d/b/a Ball Park Shell

*Policy Revision 2 (September 2002)*

**Case ID No.** 40631

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN104533989

**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 notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with dissimilar violations.

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

Screening Date 27-Oct-2010

Docket No. 2010-1782-PST-E

PCW

Respondent Nam Bui d/b/a Ball Park Shell

Policy Revision 2 (September 2002)

Case ID No. 40631

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104533989

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description Failed to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed underground storage tank ("UST") registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired on August 31, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
	100% of the rule requirement was not met.				

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 442 Number of violation days

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

Violation Base Penalty \$5,000

Two annual events are recommended.

Good Faith Efforts to Comply

	10.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes The Respondent came into compliance on November 15, 2010, after the Notice of Enforcement dated October 22, 2010.

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$111

Violation Final Penalty Total \$4,700

This violation Final Assessed Penalty (adjusted for limits) \$4,700

## Economic Benefit Worksheet

**Respondent** Nam Bui d/b/a Ball Park Shell  
**Case ID No.** 40631  
**Req. Ent. Reference No.** RN104533989  
**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	22-Oct-2010	15-Nov-2010	0.07	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to renew a delivery certificate by submitting a properly completed UST registration and self-certification form. The Date Required is the record review 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]	\$100	1-Aug-2009	22-Oct-2010	2.14	\$11	\$100	\$111
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost (\$100 per full year) to accurately prepare and submit an updated registration and obtain a TCEQ delivery certificate. The Date Required is 30 days prior to the expiration date of the delivery certificate and the Final Date is the record review date.

Approx. Cost of Compliance

\$200

**TOTAL**

\$111

**Screening Date** 27-Oct-2010  
**Respondent** Nam Bui d/b/a Ball Park Shell  
**Case ID No.** 40631  
**Reg. Ent. Reference No.** RN104533989  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Clinton Sims

**Docket No.** 2010-1782-PST-E

**PCW**

*Policy Revision 2 (September 2002)*

*PCW Revision October 30, 2008*

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text" value="x"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events  Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text" value="x"/>
N/A	<input type="text"/>	(mark with x)

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Nam Bui d/b/a Ball Park Shell  
**Case ID No.** 40631  
**Req. Ent. Reference No.** RN104533989  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$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 27-Oct-2010

Docket No. 2010-1782-PST-E

PCW

Respondent Nam Bui d/b/a Ball Park Shell

Policy Revision 2 (September 2002)

Case ID No. 40631

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104533989

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Clinton Sims

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2), and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Failed to provide release detection for the piping associated with the USTs. Specifically, the Respondent did not conduct the annual piping tightness test.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				50%
	Potential	x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1 5 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

One monthly event is recommended based on documentation of the violation during the October 22, 2010 record review date to the October 27, 2010 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$500

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

Notes The Respondent came into compliance on November 15, 2010, after the Notice of Enforcement dated October 22, 2010.

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$115

Violation Final Penalty Total \$4,700

This violation Final Assessed Penalty (adjusted for limits) \$4,700

## Economic Benefit Worksheet

**Respondent** Nam Bui d/b/a Ball Park Shell  
**Case ID No.** 40631  
**Req. Ent. Reference No.** RN104533989  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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	22-Oct-2010	15-Nov-2010	0.07	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to monitor the USTs for releases. Date Required is the record review 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]	\$100	22-Oct-2009	15-Nov-2010	1.98	\$10	\$100	\$110
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for conducting the required annual piping tightness test. The Date Required is one year prior to the record review date and the Final Date is the compliance date.

Approx. Cost of Compliance

\$1,600

**TOTAL**

\$115

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603812033 Nam Bui Classification: AVERAGE Rating: 1.00  
Regulated Entity: RN104533989 Ball Park Shell Classification: AVERAGE Site Rating: 1.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 77162  
REGISTRATION  
Location: 2002 RUNNELS ST, HOUSTON, TX, 77003  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: October 26, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: October 26, 2005 to October 26, 2010  
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? 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: 9/1/2010 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.  
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 03/23/2007 (543672)
    - 2 04/15/2010 (798949)
    - 3 10/22/2010 (843769)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 03/23/2007 (543672) CN602788028**

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.
  - 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  
ENFORCEMENT ACTION  
CONCERNING  
NAM BUI D/B/A BALL PARK  
SHELL;  
RN104533989**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-1782-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Nam Bui d/b/a Ball Park Shell ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 2002 Runnels Street in Houston, Harris County, Texas (the "Facility"). The USTs at the Facility 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.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of ten thousand three hundred forty-one dollars (\$10,341.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid seven hundred sixteen dollars (\$716.00) of the administrative penalty. The remaining amount of nine thousand six hundred twenty-five dollars (\$9,625.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred seventy-five dollars (\$275.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including

the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
  - a. Submitted an updated registration and obtained a TCEQ delivery certificate which became valid on November 15, 2010;
  - b. Implemented a release detection method for all USTs at the Facility and successfully conducted the annual piping tightness test on November 15, 2010; and
  - c. Submitted documentation indicating that an annual piping tightness test with passing results had been conducted on November 15, 2010.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

1. During an investigation conducted on June 24, 2010, by a University of Texas at Arlington Petroleum Storage Tank Investigator (TCEQ contractor) and a record review conducted on October 22, 2010 by TCEQ Central Office staff, it was documented that Respondent:
  - a. Failed to timely renew a previously issued TCEQ 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). Specifically, the delivery certificate expired on August 31, 2009;

- b. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a). Specifically, Respondent received one delivery of fuel without a delivery certificate; and
  - c. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and failed to provide release detection for the piping associated with the USTs, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2), and TEX. WATER CODE § 26.3475(a) and (c)(1). Specifically, Respondent did not conduct the annual piping tightness test.
2. Respondent received notice of the violations on or about October 22, 2010.

### III. DENIALS

Respondent generally denies each Allegation in Section II.

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Nam Bui d/b/a Ball Park Shell, Docket No. 2010-1782-PST-E" to:  

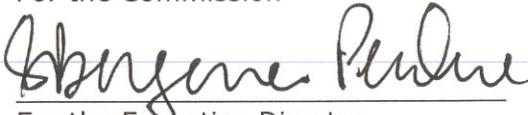
Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until 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 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 separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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



For the Executive Director

9/29/2011

Date

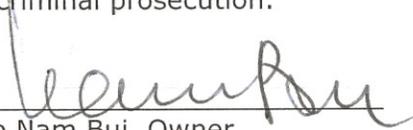
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Nam Bui d/b/a Ball Park Shell, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

\_\_\_\_\_  
Signature Nam Bui, Owner  
Ball Park Shell



Date

8/28/2011