

Executive Summary – Enforcement Matter – Case No. 41879
Vinod Nagi dba Park N Sak II
RN102462660
Docket No. 2011-0994-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Park N Sak II, 1410 West Whitestone Boulevard, Cedar Park, Williamson County

Type of Operation:

Convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: September 2, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$4,500

Amount Deferred for Expedited Settlement: \$900

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$3,600

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average by Default

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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Docket No. 2011-0994-PST-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: May 13, 2011
Date(s) of NOE(s): May 13, 2011

Violation Information

Failed to monitor underground storage tanks (“USTs”) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that by June 16, 2011, the Respondent implemented a release detection method for the UST system.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Raymond Marlow, P.G., Enforcement Division, Enforcement Team 5, MC R-10, (409) 899-8785; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Vinod Nagi, Owner, Park N Sak II, 10140 Brimfield Drive, Austin, Texas 78726
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-May-2011	Screening	2-Jun-2011	EPA Due	
	PCW	27-Jun-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Vinod Nagi dba Park N Sak II
Reg. Ent. Ref. No.	RN102462660
Facility/Site Region	11-Austin
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	41879	No. of Violations	1
Docket No.	2011-0994-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Raymond Marlow, P.G.
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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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.	
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Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$500
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$7
 Approx. Cost of Compliance: \$1,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$4,500

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,500
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DEFERRAL	20.0% Reduction	Adjustment	-\$900
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$3,600
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Screening Date 2-Jun-2011

Docket No. 2011-0994-PST-E

PCW

Respondent Vinod Nagi dba Park N Sak II

Policy Revision 2 (September 2002)

Case ID No. 41879

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102462660

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Raymond Marlow, P.G.

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	0	0%
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) 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 2-Jun-2011
Respondent Vinod Nagi dba Park N Sak II
Case ID No. 41879
Reg. Ent. Reference No. RN102462660
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Raymond Marlow, P.G.

Docket No. 2011-0994-PST-E

PCW

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

Violation Number 1

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

Violation Description Failed to monitor underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

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 20 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

One monthly event is recommended based on the record review date of May 13, 2011 to the screening date of June 2, 2011.

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 completed corrective actions on June 16, 2011, after the Notice of Enforcement date and prior to the Settlement Offer.

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

Economic Benefit Worksheet

Respondent Vinod Nagi dba Park N Sak II
Case ID No. 41879
Reg. Ent. Reference No. RN102462660
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
<small>No commas or \$</small>							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	13-May-2011	16-Jun-2011	0.09	\$7	n/a	\$7

Notes for DELAYED costs

Estimated expense to implement a release detection method for the UST system. The Date Required is the record review 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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$7

Compliance History

Customer/Respondent/Owner-Operator: CN603557976 NAGI, VINOD Classification: AVERAGE Rating: 3.01
Regulated Entity: RN102462660 PARK N SAK II Classification: AVERAGE Site Rating: 3.01
BY DEFAULT
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 71064
Location: 1410 W WHITESTONE BLVD, CEDAR PARK, TX, 78613
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: June 02, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 02, 2006 to June 02, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Raymond Marlow, P.G. Phone: (409) 899-8785

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? OWNOPR NAGI, VINOD
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR KOPECKY, WILLIE J JR
5. When did the change(s) in owner or operator occur? 01/01/2008
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. 05/13/2011 (881205)
- 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
VINOD NAGI DBA PARK N SAK II
RN102462660**

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§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0994-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 Vinod Nagi dba Park N Sak II ("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 convenience store with retail sales of gasoline at 1410 West Whitestone Boulevard in Cedar Park, Williamson County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are 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 May 18, 2011.
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 Four Thousand Five Hundred Dollars (\$4,500) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). The Respondent has paid Three Thousand Six Hundred Dollars (\$3,600) of the administrative penalty and Nine Hundred Dollars (\$900) 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 by June 16, 2011, the Respondent implemented a release detection method for the UST system.
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 failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during a record review conducted on May 13, 2011.

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: Vinod Nagi dba Park N Sak II, Docket No. 2011-0994-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon 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.
3. 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.
4. 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.
5. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

R. D. Hyle

For the Executive Director

9/27/11
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.

FILE COPY

Vinod Nagi
Signature

9/27/11
Date

VINOD NAGI
Name (Printed or typed)
Authorized Representative of
Vinod Nagi dba Park N Sak II

OWNER
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.