

Executive Summary – Enforcement Matter – Case No. 41731  
Thong Van Nguyen DBA T & L Conoco  
RN102442712  
Docket No. 2011-0835-PST-E

**Order Type:**

Default Shutdown Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

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

6509 Brentwood Stair Road, Fort Worth, Tarrant County

**Type of Operation:**

convenience 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:** March 16, 2012

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$12,081

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$12,081

**Compliance History Classifications:**

Person/CN – Average  
Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** August 19, 2010; May 19, 2011  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** May 19, 2011

***Violation Information***

1. 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 [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 [TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i)].
3. Failed to demonstrate acceptable 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 a petroleum UST system [30 TEX. ADMIN. CODE § 37.815(a) and (b)].
4. 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 [TEX. WATER CODE § 26.3475(a) and (c)(1), and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2)].
5. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Immediately shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;
  - d. Empty the USTs of all regulated substances; and
  - e. Temporarily remove the USTs from service.
2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected.
3. Respondent's UST fuel delivery certificate is revoked immediately. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. Within 10 days, Respondent shall surrender its UST fuel delivery certificate.
5. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1 and 4.

**Executive Summary – Enforcement Matter – Case No. 41731**  
**Thong Van Nguyen DBA T & L Conoco**  
**RN102442712**  
**Docket No. 2011-0835-PST-E**

6. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
  - a. Obtain a valid UST delivery certificate from the TCEQ by submitting a properly completed UST registration and self-certification form;
  - b. Begin maintaining all UST records;
  - c. Submit documentation that demonstrates acceptable 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; and
  - d. Implement a release detection method for all USTs at the Facility and conduct the annual piping tightness test.
7. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
8. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 6 and 7.

***Litigation Information***

**Date Petition(s) Filed:** October 31, 2011  
**Date(s) Green Card(s) Signed:** Unclaimed  
**Date(s) Answer(s) Filed:** N/A

***Contact Information***

**TCEQ Attorneys:** Jim Sallans, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Scott Humphrey, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Judy Kluge, Waste Enforcement Section, (817)588-5825  
**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5903  
**Respondent:** Thong Van Nguyen, 6509 Brentwood Stair Road, Fort Worth, Texas 76112  
**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> | 24-May-2011 | <b>Screening</b> | 25-May-2011 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 26-Aug-2011 |                  |             |                |  |

|  |                                   |                           |       |  |  |  |
|--|-----------------------------------|---------------------------|-------|--|--|--|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                                   |                           |       |  |  |  |
| <b>Respondent</b>                      | Thong Van Nguyen dba T & L Conoco |                           |       |  |  |  |
| <b>Reg. Ent. Ref. No.</b>              | RN102442712                       |                           |       |  |  |  |
| <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>                | 41731                  | <b>No. of Violations</b>     | 5                  |  |  |  |
| <b>Docket No.</b>                      | 2011-0835-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> | <b>\$9,000</b> |
|---|-------------------|----------------|

### 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> | <b>\$180</b> |
|---------------------------|------------------|--------------------------------|--------------|

Notes: Enhancement for one prior dissimilar NOV.

|                    |    |                  |                   |            |
|--------------------|----|------------------|-------------------|------------|
| <b>Culpability</b> | No | 0.0% Enhancement | <b>Subtotal 4</b> | <b>\$0</b> |
|--------------------|----|------------------|-------------------|------------|

Notes: The Respondent does not meet the culpability criteria.

|  |                   |            |
|--|-------------------|------------|
| <b>Good Faith Effort to Comply Total Adjustments</b> | <b>Subtotal 5</b> | <b>\$0</b> |
|--|-------------------|------------|

|                         |                   |                   |            |
|-------------------------|-------------------|-------------------|------------|
| <b>Economic Benefit</b> | 0.0% Enhancement* | <b>Subtotal 6</b> | <b>\$0</b> |
|-------------------------|-------------------|-------------------|------------|

|                            |         |
|----------------------------|---------|
| Total EB Amounts           | \$2,983 |
| Approx. Cost of Compliance | \$4,858 |

\*Capped at the Total EB \$ Amount

|                             |                       |                |
|-----------------------------|-----------------------|----------------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | <b>\$9,180</b> |
|-----------------------------|-----------------------|----------------|

|   |       |                   |                |
|---|-------|-------------------|----------------|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | 31.6% | <b>Adjustment</b> | <b>\$2,901</b> |
|---|-------|-------------------|----------------|

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 3 and 4.

|                             |                 |
|-----------------------------|-----------------|
| <b>Final Penalty Amount</b> | <b>\$12,081</b> |
|-----------------------------|-----------------|

|                                   |                               |                 |
|-----------------------------------|-------------------------------|-----------------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | <b>\$12,081</b> |
|-----------------------------------|-------------------------------|-----------------|

|                 |                |                   |            |
|-----------------|----------------|-------------------|------------|
| <b>DEFERRAL</b> | 0.0% Reduction | <b>Adjustment</b> | <b>\$0</b> |
|-----------------|----------------|-------------------|------------|

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

Notes: Deferral not offered for non-expedited settlement.

|                        |                 |
|------------------------|-----------------|
| <b>PAYABLE PENALTY</b> | <b>\$12,081</b> |
|------------------------|-----------------|

**Screening Date** 25-May-2011

**Docket No.** 2011-0835-PST-E

**PCW**

**Respondent** Thong Van Nguyen dba T & L Conoco

*Policy Revision 2 (September 2002)*

**Case ID No.** 41731

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102442712

**Media [Statute]** Petroleum Storage Tank

**Enf. 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 ( <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 prior dissimilar NOV.

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

Screening Date 25-May-2011

Docket No. 2011-0835-PST-E

PCW

Respondent Thong Van Nguyen dba T & L Conoco

Policy Revision 2 (September 2002)

Case ID No. 41731

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102442712

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

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 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 delivery certificate expired on June 30, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| OR        | Release | Harm  |          |       | Percent |
|-----------|---------|-------|----------|-------|---------|
|           |         | Major | Moderate | Minor |         |
| Actual    |         |       |          |       | 0%      |
| Potential |         |       |          |       |         |

>> Programmatic Matrix

| Matrix Notes | Falsification | Harm  |          |       | Percent |
|--------------|---------------|-------|----------|-------|---------|
|              |               | Major | Moderate | Minor |         |
|              |               | x     |          |       | 10%     |

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 329 Number of violation days

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

Violation Base Penalty \$1,000

One annual event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$1,342

This violation Final Assessed Penalty (adjusted for limits) \$1,342

## Economic Benefit Worksheet

**Respondent** Thong Van Nguyen dba T & L Conoco  
**Case ID No.** 41731  
**Req. Ent. Reference No.** RN102442712  
**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 | 31-May-2010 | 19-Jan-2012 | 1.64 | \$8 | n/a | \$8 |

Notes for DELAYED costs

The estimated cost to accurately prepare and submit an updated UST registration and obtain a TCEQ delivery certificate. The date required is 30 days before the expiration date of the delivery certificate 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)**

|                               |  |  |  |      |     |     |     |
|-------------------------------|--|--|--|------|-----|-----|-----|
| 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

\$100

**TOTAL**

\$8

Screening Date 25-May-2011

Docket No. 2011-0835-PST-E

PCW

Respondent Thong Van Nguyen dba T & L Conoco

Policy Revision 2 (September 2002)

Case ID No. 41731

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102442712

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 USTs. Specifically, the Respondent received one delivery of fuel without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (5%).

>> Programmatic Matrix

Table with columns: 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 1 Number of violation days 1

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$500

One single event is recommended for accepting one delivery of fuel.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0 Violation Final Penalty Total \$671

This violation Final Assessed Penalty (adjusted for limits) \$671

## Economic Benefit Worksheet

**Respondent** Thong Van Nguyen dba T & L Conoco  
**Case ID No.** 41731  
**Req. Ent. Reference No.** RN102442712  
**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 25-May-2011

Docket No. 2011-0835-PST-E

PCW

Respondent Thong Van Nguyen dba T & L Conoco

Policy Revision 2 (September 2002)

Case ID No. 41731

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102442712

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 37.815(a) and (b)

Violation Description Failed to demonstrate acceptable 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.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| OR | Release   | Harm  |          |       | Percent |
|----|-----------|-------|----------|-------|---------|
|    |           | Major | Moderate | Minor |         |
|    | Actual    |       |          |       | 0%      |
|    | Potential |       |          |       |         |

>> Programmatic Matrix

| Matrix Notes                              | Falsification | Harm  |          |       | Percent |
|---|---------------|-------|----------|-------|---------|
|   |               | Major | Moderate | Minor |         |
|   |               | x     |          |       | 10%     |
| 100% of the rule requirement was not met. |               |       |          |       |         |

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4 365 Number of violation days

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

Violation Base Penalty \$4,000

Four single events are recommended (one event per UST).

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 \$4,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,772 Violation Final Penalty Total \$5,369

This violation Final Assessed Penalty (adjusted for limits) \$5,369

## Economic Benefit Worksheet

**Respondent** Thong Van Nguyen dba T & L Conoco  
**Case ID No.** 41731  
**Req. Ent. Reference No.** RN102442712  
**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)        |  |  |  | 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]       | \$2,640 | 19-May-2010 | 19-May-2011 | 1.00 | \$132 | \$2,640 | \$2,772 |
| ONE-TIME avoided costs [3]    |         |             |             | 0.00 | \$0   | \$0     | \$0     |
| Other (as needed)             |         |             |             | 0.00 | \$0   | \$0     | \$0     |

Notes for AVOIDED costs

Estimated cost to provide financial assurance for four petroleum USTs (at \$660 per tank). The date required is one year prior to the record review date and the final date is the record review date.

Approx. Cost of Compliance

\$2,640

**TOTAL**

\$2,772

Screening Date 25-May-2011

Docket No. 2011-0835-PST-E

PCW

Respondent Thong Van Nguyen dba T & L Conoco

Policy Revision 2 (September 2002)

Case ID No. 41731

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102442712

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

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). Also, failed to provide release detection for the piping associated with the USTs. Specifically, the annual piping tightness test was not conducted.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

| Matrix Notes | Falsification | Harm  |          |       | Percent |
|--------------|---------------|-------|----------|-------|---------|
|              |               | Major | Moderate | Minor |         |
|              |               |       |          |       | 0%      |

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 Number of violation days 6

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

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the May 19, 2011 record review to the May 25, 2011 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)                 |

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 \$186

Violation Final Penalty Total \$3,356

This violation Final Assessed Penalty (adjusted for limits) \$3,356

## Economic Benefit Worksheet

**Respondent** Thong Van Nguyen dba T & L Conoco  
**Case ID No.** 41731  
**Req. Ent. Reference No.** RN102442712  
**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)        | \$1,500 | 19-May-2011 | 18-Feb-2012 | 0.75 | \$57 | n/a | \$57 |

Notes for DELAYED costs

The estimated cost of monitoring the USTs for releases. The date required is the record review 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)

|                               |       |             |             |      |      |       |       |
|-------------------------------|-------|-------------|-------------|------|------|-------|-------|
| 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]    | \$118 | 19-May-2010 | 19-May-2011 | 1.92 | \$11 | \$118 | \$129 |
| Other (as needed)             |       |             |             | 0.00 | \$0  | \$0   | \$0   |

Notes for AVOIDED costs

Estimated avoided cost for conducting the piping tightness test. The date required is one year prior to the record review date and the final date is the record review date.

Approx. Cost of Compliance

\$1,618

**TOTAL**

\$186

Screening Date 25-May-2011

Docket No. 2011-0835-PST-E

PCW

Respondent Thong Van Nguyen dba T & L Conoco

Policy Revision 2 (September 2002)

Case ID No. 41731

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102442712

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Violation Description Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| OR | Release   | Harm  |          |       | Percent |
|----|-----------|-------|----------|-------|---------|
|    |           | Major | Moderate | Minor |         |
|    | Actual    |       |          |       | 0%      |
|    | Potential |       |          |       |         |

>> Programmatic Matrix

| Matrix Notes                              | Falsification | Harm  |          |       | Percent |
|---|---------------|-------|----------|-------|---------|
|   |               | Major | Moderate | Minor |         |
|   |               | x     |          |       | 10%     |
| 100% of the rule requirement was not met. |               |       |          |       |         |

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 6 Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$17

Violation Final Penalty Total \$1,342

This violation Final Assessed Penalty (adjusted for limits) \$1,342

## Economic Benefit Worksheet

**Respondent** Thong Van Nguyen dba T & L Conoco  
**Case ID No.** 41731  
**Req. Ent. Reference No.** RN102442712  
**Media** Petroleum Storage Tank  
**Violation No.** 5

| 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    | \$500 | 19-May-2011 | 19-Jan-2012 | 0.67 | \$17 | n/a | \$17 |
| Training/Sampling        |       |             |             | 0.00 | \$0  | n/a | \$0  |
| Remediation/Disposal     |       |             |             | 0.00 | \$0  | n/a | \$0  |
| Permit Costs             |       |             |             | 0.00 | \$0  | n/a | \$0  |
| Other (as needed)        |       |             |             | 0.00 | \$0  | n/a | \$0  |

Notes for DELAYED costs

Estimated cost to maintain UST records. The date required is the record review 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)**

|                               |  |  |  |      |     |     |     |
|-------------------------------|--|--|--|------|-----|-----|-----|
| 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**

\$17

# Compliance History

Customer/Respondent/Owner-Operator: CN603571340 NGUYEN, THONG VAN Classification: AVERAGE Rating: 0.75  
Regulated Entity: RN102442712 T & L Conoco Classification: AVERAGE Site Rating: 0.75  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 13506  
Location: 6509 BRENTWOOD STAIR RD, FORT WORTH, TX, 76112  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: May 31, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: May 31, 2006 to May 31, 2011  
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? 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 07/14/2006 (482937)
    - 2 07/29/2009 (761868)
    - 3 09/30/2009 (767699)
    - 4 05/19/2011 (893278)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 07/29/2009 (761868) CN603571340**

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)  
Description: Failure to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is a part of the approved system.
  - 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



|                             |          |                              |
|-----------------------------|----------|------------------------------|
| <b>IN THE MATTER OF AN</b>  | <b>§</b> |                              |
| <b>ENFORCEMENT ACTION</b>   | <b>§</b> | <b>BEFORE THE</b>            |
| <b>CONCERNING</b>           | <b>§</b> |                              |
| <b>THONG VAN NGUYEN DBA</b> | <b>§</b> | <b>TEXAS COMMISSION ON</b>   |
| <b>T &amp; L CONOCO;</b>    | <b>§</b> |                              |
| <b>RN102442712</b>          | <b>§</b> | <b>ENVIRONMENTAL QUALITY</b> |

## DEFAULT AND SHUTDOWN ORDER

**DOCKET NO. 2011-0835-PST-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 6509 Brentwood Stair Road in Fort Worth, Tarrant County, Texas. The respondent made the subject of this Order is Thong Van Nguyen DBA T & L Conoco ("Respondent").

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

### FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), a UST system and a convenience store with retail sales of gasoline located at 6509 Brentwood Stair Road in Fort Worth, Tarrant 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. During an investigation conducted on August 19, 2010, by a UT-Arlington PST Program investigator (TCEQ Contractor), and a record review conducted on May 19, 2011, it was documented that Respondent:
  - a. 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 delivery certificate for the Facility expired on June 30, 2010;
  - 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. Specifically, Respondent received a delivery of fuel without a delivery certificate;
  - c. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury for property damage caused by accidental releases arising from the operation of a petroleum UST system;

- d. 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. Specifically, the annual piping tightness test was not conducted; and
  - e. Failed to maintain UST records and make them immediately available for inspection upon request by agency personnel.
3. By letter dated May 19, 2011, UT-Arlington provided Respondent with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overflow prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
  4. 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 Thong Van Nguyen DBA T & L Conoco" (the "EDPRP") in the TCEQ Chief Clerk's office on October 31, 2011.
  5. By letter dated October 31, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
  6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.
  7. By letter dated February 24, 2012, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the release detection and financial assurance violations within 30 days after Respondent's receipt of the notice.
  8. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection and financial assurance violations alleged in Findings of Fact Nos. 2.c. and 2.d. have been corrected.
  9. The USTs at the Facility do not have release detection and financial assurance as required by TEX. WATER CODE § 26.3475(a) and(c)(1), and 30 TEX. ADMIN. CODE §§ 37.815(a) and (b) and 334.50(b)(1)(A) and (b)(2) and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 2.a., Respondent 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, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii).
3. As evidenced by Finding of Fact No. 2.b., Respondent 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 TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i).
4. As evidenced by finding of Fact No. 2.c., Respondent failed to demonstrate acceptable 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 a petroleum UST system, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b).
5. As evidenced by Finding of Fact No. 2.d., Respondent 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 TEX. WATER CODE § 26.3475(a) and (c)(1), and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and (b)(2).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to maintain UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b).
7. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055.
8. As evidenced by Findings of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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.
10. An administrative penalty in the amount of twelve thousand eighty-one dollars (\$12,081.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. As evidenced by Findings of Fact Nos. 3, 7, and 8, Respondent failed to correct documented violations of Commission requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the Facility.

12. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
13. 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.
14. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.
15. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6 and Conclusions of Law Nos. 2 through 8.
16. As evidenced by Findings of Fact Nos. 8 and 9, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

#### **ORDERING PROVISIONS**

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

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:
  - a. Cease dispensing fuel from the USTs;
  - b. Cease receiving deliveries of regulated substances into the USTs;
  - c. Padlock the dispensers;
  - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
  - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. Respondent's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provisions Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and financial assurance violations noted in Findings of Fact Nos. 2.c. and 2.d. and Conclusion of Law Nos. 4 and 5 have been corrected.

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

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

4. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent shall cease accepting 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. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.
5. Within 10 days after the effective date of this Order, Respondent shall send his UST fuel delivery certificate to:

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

6. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 12, below, certifying the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e. and 5.
7. Respondent is assessed an administrative penalty in the amount of twelve thousand eighty-one dollars (\$12,081.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order 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.
8. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Thong Van Nguyen DBA T & L Conoco; Docket No. 2011-0835-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

9. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:
  - a. Obtain a valid UST delivery certificate from the TCEQ by submitting a properly completed UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8 (Conclusions of Law Nos. 2 and 3);
  - b. Begin maintaining all UST records, in accordance with 30 TEX. ADMIN. CODE § 334.10 (Conclusion of Law No. 6);
  - c. Submit documentation that demonstrates acceptable 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, in accordance with 30 TEX. ADMIN. CODE § 37.815 (Conclusion of Law No. 4); and
  - d. Implement a release detection method for all USTs at the Facility and conduct the annual piping tightness test, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusion of Law No. 5).
10. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
11. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 12, below, to demonstrate compliance with Ordering Provisions Nos. 9 and 10.
12. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

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

13. All relief not expressly granted in this Order is denied.
14. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
15. If Respondent fails 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, Respondent's failure to comply is not a violation of this 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.
16. 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 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.
17. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
18. 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.
19. 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 this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

Thong Van Nguyen dba T & L Conoco  
Docket No. 2011-0835-PST-E  
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**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF JIM SALLANS**

**STATE OF TEXAS                   §**  
**§**  
**COUNTY OF TRAVIS               §**

"My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

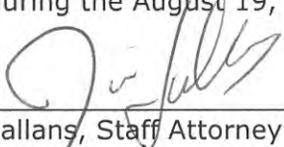
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Thong Van Nguyen DBA T & L Conoco" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 31, 2011.

The EDPRP was mailed to Respondent's last known address on October 31, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

By letter dated February 24, 2012, sent via first class mail and certified mail, return receipt requested article no. 70110470000024205351, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection and financial assurance were not corrected within 30 days of Respondent's receipt of the letter. According to the return receipt "green card," Respondent received the notice on February 27, 2012.

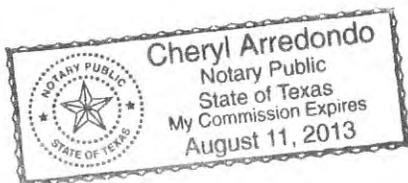
As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the violations noted during the August 19, 2010, investigation."



\_\_\_\_\_  
Jim Sallans, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, 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 26th day of April, A.D. 2012.



*Cheryl Arredondo*  
\_\_\_\_\_  
Notary Signature