

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 42764  
A NUMAN, INC. d/b/a A Food Mart  
RN102057809  
Docket No. 2011-1915-PST-E

**Order Type:**

Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

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

17015 Rolling Creek Drive, Houston, Harris 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:** October 26, 2012

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$13,870

**Amount Deferred for Financial Inability to Pay:** \$7,412

**Total Paid to General Revenue:** \$333

**Total Due to General Revenue:** \$6,125

Payment Plan: 35 payments of \$175 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average

Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002

**A NUMAN, INC. d/b/a A Food Mart**

RN102057809

Docket No. 2011-1915-PST-E

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** December 17, 2010; October 7, 2011  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** October 7, 2011

**Violation Information**

1. Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
2. Failed to report a suspected release to the TCEQ within 24 hours of discovery [30 TEX. ADMIN. CODE § 334.72].
3. Failed to investigate a suspected release within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74].

**Corrective Actions/Technical Requirements****Corrective Action(s) Completed:**

Respondent submitted release determination information to the ED on March 8, 2012, which included passing tightness testing data. On May 7, 2012, the ED determined that no further system test activities and no further release investigation activities related to the February 2010 Statistical Inventory Reconciliation ("SIR") were required.

**Technical Requirements:**

1. Immediately, establish and implement a process for reporting a suspected release.
2. Within 30 days, implement a release detection method for all USTs at the Facility.
3. Within 45 days, submit written certification to demonstrate compliance.

**Litigation Information**

**Date Petition(s) Filed:** March 19, 2012  
**Date Answer(s) Filed:** April 9, 2012  
**SOAH Referral Date:** May 21, 2012  
**Hearing Date(s):**  
Preliminary hearing: June 28, 2012 (waived)  
Evidentiary hearing: October 23, 2012 (scheduled)  
**Settlement Date:** September 28, 2012

**Contact Information**

**TCEQ Attorneys:** Kari L. Gilbreth, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Amy Swanholm, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Thomas Greimel, Enforcement Division, (512) 239-5690  
**TCEQ Regional Contact:** Nicole Bealle, Houston Regional Office, (713) 767-3500  
**Respondent:** Showkat Ali, Director, A NUMAN, INC., 17105 Rolling Creek Drive, Houston, Texas 77090  
**Respondent's Attorney:** Jennifer Fleck, Ted A. Cox, P.C., 1225 W. 34th St., Houston, Texas 77018



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	10-Oct-2011	<b>Screening</b>	12-Oct-2011	<b>EPA Due</b>	
	<b>PCW</b>	17-Aug-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	A NUMAN, INC. dba A Food Mart
<b>Reg. Ent. Ref. No.</b>	RN102057809
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	42764	<b>No. of Violations</b>	3
<b>Docket No.</b>	2011-1915-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>	Thomas Greimel
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$13,500
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
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>	\$270

<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>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$559	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$6,600		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$13,770
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.7%	<b>Adjustment</b>	\$100
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<b>Notes</b>	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.
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<b>Final Penalty Amount</b>	\$13,870
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$13,870
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$13,870
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**Screening Date** 12-Oct-2011

**Docket No.** 2011-1915-PST-E

**PCW**

**Respondent** A NUMAN, INC. dba A Food Mart

Policy Revision 2 (September 2002)

**Case ID No.** 42764

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102057809

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Thomas Greimel

### 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)** 2%

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

No

**Adjustment Percentage (Subtotal 3)** 0%

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

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with dissimilar violations.

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

**Screening Date** 12-Oct-2011 **Docket No.** 2011-1915-PST-E **PCW**  
**Respondent** A NUMAN, INC. dba A Food Mart *Policy Revision 2 (September 2002)*  
**Case ID No.** 42764 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102057809  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Thomas Greimel

**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="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> **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

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**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"/>
N/A	<input type="text" value="x"/>	(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** A NUMAN, INC. dba A Food Mart  
**Case ID No.** 42764  
**Reg. Ent. Reference No.** RN102057809  
**Media Violation No.** 1  
**Media 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
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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	17-Dec-2010	11-May-2012	1.40	\$105	n/a	\$105

Notes for DELAYED costs

Estimated cost to monitor the UST for releases. The Date Required is the date of the investigation and the Final Date is the estimated 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	\$1,500	<b>TOTAL</b>	\$105
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Screening Date 12-Oct-2011

Docket No. 2011-1915-PST-E

PCW

Respondent A NUMAN, INC. dba A Food Mart

Policy Revision 2 (September 2002)

Case ID No. 42764

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102057809

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.72

Violation Description

Failed to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, statistical inventory reconciliation ("SIR") results for February 2010 indicated a suspected release that was not reported.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

1 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 \$100

Violation Final Penalty Total \$1,027

This violation Final Assessed Penalty (adjusted for limits) \$1,027

# Economic Benefit Worksheet

**Respondent** A NUMAN, INC. dba A Food Mart  
**Case ID No.** 42764  
**Reg. Ent. Reference No.** RN102057809  
**Media Violation No.** Petroleum Storage Tank  
 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

### 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-Mar-2010	2-Mar-2010	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. The Date Required is the date of the suspected release and the Final Date is the date the report was due.

Approx. Cost of Compliance \$100

**TOTAL** \$100

Screening Date 12-Oct-2011

Docket No. 2011-1915-PST-E

PCW

Respondent A NUMAN, INC. dba A Food Mart

Policy Revision 2 (September 2002)

Case ID No. 42764

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102057809

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 334.74

Violation Description

Failed to investigate a suspected release within 30 days of discovery. Specifically, SIR results for February 2010 indicated a suspected release that was not investigated.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4

315 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$10,000

Four quarterly events are recommended from the release investigation due date of December 1, 2010 to the October 12, 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)

Notes

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

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$354

Violation Final Penalty Total \$10,274

This violation Final Assessed Penalty (adjusted for limits) \$10,274

# Economic Benefit Worksheet

**Respondent** A NUMAN, INC. dba A Food Mart  
**Case ID No.** 42764  
**Reg. Ent. Reference No.** RN102057809  
**Media Violation No.** Petroleum Storage Tank  
 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)	\$5,000	1-Dec-2010	1-May-2012	1.42	\$354	n/a	\$354

Notes for DELAYED costs

Estimated cost to investigate a suspected release. The Date Required is the date the release investigation was due and the Final Date is the estimated 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

\$5,000

**TOTAL**

\$354

# Compliance History

Customer/Respondent/Owner-Operator:	CN601113798    A NUMAN, INC.	Classification: AVERAGE	Rating: 3.00
Regulated Entity:	RN102057809    A Food Mart	Classification: AVERAGE	Site Rating: 3.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	73569
Location:	17015 ROLLING CREEK DR, HOUSTON, TX, 77090		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	October 12, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 12, 2006 to October 12, 2011		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Kimberly Walker Phone: (512) 239-2596

## 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: 9/1/2011 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 10/07/2011 (900660)
  - 2 03/31/2011 (905329)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

<b>Date:</b>	<b>04/01/2011 (905329)</b>	<b>CN601113798</b>		Classification: Moderate
Self Report?	NO			
Citation:	30 TAC Chapter 115, SubChapter C 115.245(2)			
Description:	Failure to successfully conduct annual Stage II testing in 2009.			
Self Report?	NO			
Citation:	30 TAC Chapter 115, SubChapter C 115.242(3)		Classification:	Moderate
Description:	Failure to install a vapor cap over the super unleaded fill port and failure to lower the fill port to protect it vehicular traffic.			
- 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  
A NUMAN, INC. D/B/A  
A FOOD MART;  
RN102057809**

**§  
§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2011-1915-PST-E**

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

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding A NUMAN, INC. d/b/a A Food Mart ("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, represented by Jennifer Fleck of the law firm Ted A. Cox, P.C., together stipulate that:

1. Respondent operates, as defined in 30 TEX. ADMIN. CODE § 334.2, an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 17015 Rolling Creek Drive 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 thirteen thousand eight hundred seventy dollars (\$13,870.00) is assessed by the Commission in settlement of the violations alleged in Section II. The Financial Assurance Section of the Commission's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay part of the administrative penalty. Therefore, seven thousand four hundred twelve dollars (\$7,412.00) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Agreed Order, and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including any payment schedule, the

Executive Director may require Respondent to pay all or part of the deferred administrative penalty.

Respondent paid three hundred thirty-three dollars (\$333.00) of the undeferred administrative penalty. The remaining amount of six thousand one hundred twenty-five dollars (\$6,125.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one hundred seventy-five dollars (\$175.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, 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, the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of the deferred penalty amount.

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 and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
8. The Executive Director recognizes that Respondent submitted release determination information to the Executive Director on March 8, 2012, which included passing tightness testing data. On May 7, 2012, the Executive Director determined that no further system test activities and no further release investigation activities related to the February 2010 Statistical Inventory Reconciliation ("SIR") were required.
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 contained 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 December 17, 2010, and a record review conducted on October 7, 2011, by a UT-Arlington PST Program investigator (TCEQ contractor), it was documented that Respondent:
  - a. Failed to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A);
  - b. Failed to report a suspected release to the TCEQ within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72; and
  - c. Failed to investigate a suspected release within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74.
2. Respondent received notice of the violations on or about October 11, 2011.

## 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: A NUMAN, INC. d/b/a A Food Mart, Docket No. 2011-1915-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. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Respondent shall establish and implement a process for reporting a suspected release, in accordance with 30 TEX. ADMIN. CODE § 334.72;
  - b. Within 30 days after the effective date of this Agreed Order, Respondent shall implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
  - c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification 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 certification 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:

Nicole Bealle, Waste Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. All relief not expressly granted in this Agreed Order is denied.
4. 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.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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 a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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

  
\_\_\_\_\_  
For the Executive Director

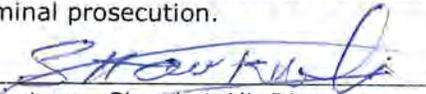
12/17/12  
Date

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 A NUMAN, INC. d/b/a A Food Mart, 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 - Showkat Ali, Director  
A NUMAN, INC.

09-28-2012  
Date