

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 58511
Lumbini Enterprise LLC dba Neighborhood Food Mart
RN102269818
Docket No. 2019-1551-PST-E

Order Type:
Default Shutdown Order

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
2509 South Bell Boulevard, Cedar Park, Williamson County

Type of Operation:
convenience store with retail sales of gasoline

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties:
Past-Due Fees: \$54.52; 0060447U
Other: None
Interested Third Parties: None
Texas Register Publication Date: May 20, 2022
Comments Received: None

Penalty Information

Total Penalty Assessed: \$8,195
Total Paid to General Revenue: \$0
Total Due to General Revenue: \$8,195

Compliance History Classifications:
Person/CN - Satisfactory
Site/RN - Satisfactory

Major Source: No
Statutory Limit Adjustment: None
Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: September 25, 2019
Date(s) of NOV(s): N/A
Date(s) of NOE(s): October 18, 2019

Violation Information

1. Failed to inspect the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(2)(C)].
2. Failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(4)(C)].
3. Failed to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent conducted the triennial testing of the corrosion protection system on September 30, 2019.

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 Facility's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in the Order, including payment of the administrative penalty in full.
3. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the violations have been corrected and Respondent obtains a new fuel delivery certificate for the Facility.
4. Immediately cease accepting fuel at the Facility until such time as a valid delivery certificate is obtained from the TCEQ.
5. Within 10 days, Respondent shall surrender the Facility's UST fuel delivery certificate to the TCEQ.
6. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1, 4 and 5.
7. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline:
 - a. Begin conducting inspections of the rectifier and other components of the corrosion protection system at least once every 60 days;
 - b. Implement a release detection method for the USTs at the Facility; and
 - c. Obtain a new fuel delivery certificate.
8. 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.
9. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 7 and 8.

Litigation Information

Date Petition(s) Filed: July 21, 2020; October 8, 2020
Date Green Card(s) Signed: unclaimed; delivered, first-class not returned
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Taylor Pearson, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363
TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575
TCEQ Enforcement Coordinator: Berenice Munoz, Enforcement Division, (915) 834-4976
TCEQ Regional Contact: Elijah Gandee, Austin Regional Office, (512) 239-7035
Respondent Contact: Minal Keshvara, Managing Member, Lumbini Enterprise LLC, 2509 South Bell
Boulevard, Cedar Park, Texas 78613-4769
Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	21-Oct-2019	Screening	28-Oct-2019	EPA Due	
	PCW	3-Feb-2020				

RESPONDENT/FACILITY INFORMATION

Respondent	Lumbini Enterprise LLC dba Neighborhood Food Mart				
Reg. Ent. Ref. No.	RN102269818				
Facility/Site Region	11-Austin	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	58511	No. of Violations	2
Docket No.	2019-1551-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Berenice Munoz
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0.0% Adjustment	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment for Compliance History.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$67	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$1,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	9.3% Adjustment	\$695
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 1.
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Final Penalty Amount	\$8,195
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,195
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DEFERRAL	0.0% Reduction Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$8,195
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Screening Date 28-Oct-2019

Docket No. 2019-1551-PST-E

PCW

Respondent Lumbini Enterprise LLC dba Neighborhood Food Mart

Policy Revision 4 (April 2014)

Case ID No. 58511

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102269818

Media Petroleum Storage Tank

Enf. Coordinator Berenice Munoz

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments 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%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for Compliance History.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 28-Oct-2019

Docket No. 2019-1551-PST-E

PCW

Respondent Lumbini Enterprise LLC dba Neighborhood Food Mart

Policy Revision 4 (April 2014)

Case ID No. 58511

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102269818

Media Petroleum Storage Tank

Enf. Coordinator Berenice Munoz

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(2)(C) and (c)(4)(C) and Tex. Water Code § 26.3475(d)

Violation Description Failed to inspect the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Also, failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years. Specifically, the Respondent had not conducted the triennial testing of the corrosion protection system.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (15.0%). Includes an 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0.0%).

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 33 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and a selection column (X in quarterly).

Violation Base Penalty \$3,750

One quarterly event is recommended from the September 25, 2019 investigation date to the October 28, 2019 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Table with columns: Effort (Extraordinary, Ordinary, N/A) and timing (Before NOE/NOV, NOE/NOV to EDPRP/Settlement Offer). Includes an 'X' in N/A/Before NOE/NOV.

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$699

Violation Final Penalty Total \$4,098

This violation Final Assessed Penalty (adjusted for limits) \$4,098

Economic Benefit Worksheet

Respondent Lumbini Enterprise LLC dba Neighborhood Food Mart
Case ID No. 58511
Reg. Ent. Reference No. RN102269818
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	Costs Saved	EB Amount
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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	25-Sep-2019	16-Aug-2020	0.89	\$4	n/a	\$4

Notes for DELAYED costs

Estimated delayed cost to conduct inspections of the rectifier and other components of the corrosion protection system at least once every 60 days. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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	\$600	27-Jul-2019	28-Oct-2019	0.25	\$1	\$153	\$154
Inspection/Reporting/Sampling	\$167	25-Sep-2016	30-Sep-2019	3.01	\$39	\$502	\$541
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct inspections of the rectifier and other components of the corrosion protection system at least once every 60 days (\$100 annualized) and to conduct the triennial testing of the corrosion protection system (\$500 annualized). The Dates Required are 60 days prior to the investigation date and three years prior to the investigation date, respectively, and the Final Dates are the screening date and the date of compliance, respectively.

Approx. Cost of Compliance

\$755

TOTAL

\$699

Screening Date 28-Oct-2019

Docket No. 2019-1551-PST-E

PCW

Respondent Lumbini Enterprise LLC dba Neighborhood Food Mart

Policy Revision 4 (April 2014)

Case ID No. 58511

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102269818

Media Petroleum Storage Tank

Enf. Coordinator Berenice Munoz

Violation Number 2

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

Violation Description Failed to monitor the underground storage tanks ("USTs") in a manner which will detect a release at a frequency of at least once every 30 days.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				15.0%
	Potential	X			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 33 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the September 25, 2019 investigation date to the October 28, 2019 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	X

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$67

Violation Final Penalty Total \$4,098

This violation Final Assessed Penalty (adjusted for limits) \$4,098

Economic Benefit Worksheet

Respondent Lumbini Enterprise LLC dba Neighborhood Food Mart
Case ID No. 58511
Reg. Ent. Reference No. RN102269818
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	Costs Saved	EB Amount
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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	25-Sep-2019	16-Aug-2020	0.89	\$67	n/a	\$67

Notes for DELAYED costs

Estimated delayed cost to implement a release detection method for the USTs at the Facility. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$67

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN604158030, RN102269818, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator: CN604158030, Lumbini Enterprise LLC **Classification:** SATISFACTORY **Rating:** 3.75
Regulated Entity: RN102269818, Neighborhood Food Mart **Classification:** SATISFACTORY **Rating:** 3.75
Complexity Points: 5 **Repeat Violator:** NO
CH Group: 12 - Agriculture, Forestry, Fishing, and Hunting
Location: 2509 South Bell Boulevard, Cedar Park, Williamson County, Texas 78613-4769
TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

PETROLEUM STORAGE TANK REGISTRATION

REGISTRATION 39567

Compliance History Period: September 01, 2014 to August 31, 2019 **Rating Year:** 2019 **Rating Date:** 09/01/2019

Date Compliance History Report Prepared: October 28, 2019

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 28, 2014 to October 28, 2019

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Berenice Munoz

Phone: (915) 834-4976

Site and Owner/Operator History:

- 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1 November 12, 2016 (1370511)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Component Appendices

Appendix A

All NOVs Issued During Component Period 10/28/2014 and 10/28/2019

N/A

For Informational Purposes Only

Appendix B

All Investigations Conducted During Component Period October 28, 2014 and October 28, 2019

(1370511)

Item 1*

November 12, 2016**

For Informational Purposes Only

(1599141)

Item 2

October 18, 2019

For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2014 and 08/31/2019.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LUMBINI ENTERPRISE LLC DBA
NEIGHBORHOOD FOOD MART;
RN102269818**

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§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2019-1551-PST-E

On _____, 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 facility’s fuel delivery certificate. The Commission also considered the Executive Director’s Motion requesting the entry of an Order requiring the respondent to shut down and remove from service the underground storage tanks (“USTs”) located at 2509 South Bell Boulevard in Cedar Park, Williamson County, Texas. The respondent made the subject of this Order is Lumbini Enterprise LLC dba Neighborhood Food Mart (“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(78) and (75), a UST system and a convenience store with retail sales of gasoline located at 2509 South Bell Boulevard in Cedar Park, Williamson County, Texas (Facility ID No. 39567) (the “Facility”). The USTs at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the TCEQ, and contain a regulated petroleum substance as defined in the rules of the TCEQ.
2. During an investigation conducted on September 25, 2019, an investigator documented that Respondent:
 - a. Failed to inspect the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly;
 - b. Failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years. Specifically, Respondent had not conducted the triennial testing of the corrosion protection system; and
 - c. Failed to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days.
3. The Executive Director recognizes that Respondent conducted the triennial testing of the corrosion protection system on September 30, 2019.
4. By letter dated October 18, 2019, Respondent was provided with written 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 were not corrected.

5. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Lumbini Enterprise LLC dba Neighborhood Food Mart” (the “EDPRP”) in the TCEQ Chief Clerk’s office on July 21, 2020.
6. The EDPRP was mailed to Respondent’s last known address on July 21, 2020, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.”
7. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk’s office on October 8, 2020.
8. By letter dated October 8, 2020, 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. According to USPS.com “Track & Confirm” delivery confirmation records, Respondent received notice of the EDPRP on October 9, 2020.
9. 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.
10. By letter dated March 23, 2022, 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 corrosion protection violations within 30 days after Respondent’s receipt of the notice.
11. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection and corrosion protection violations alleged in Findings of Fact Nos. 2.a. and 2.c. have been corrected.
12. The USTs at the Facility do not have release detection and corrosion protection as required by TEX. WATER CODE § 26.3475(c)(1) and (d) and 30 TEX. ADMIN. CODE §§ 334.49(c)(2)(C) and 334.50(b)(1)(A), 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 TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to inspect the corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(2)(C).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(c)(4)(C).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
5. As evidenced by Findings of Fact Nos. 7 and 8, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(b)(1).

6. As evidenced by Finding of Fact No. 9, 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.
7. 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 TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of eight thousand one hundred ninety-five dollars (\$8,195.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. As evidenced by Findings of Fact Nos. 2.a., 2.c., 4, 10, and 11, Respondent failed to correct documented violations of TCEQ release detection and corrosion protection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the USTs at the Facility.
10. 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 TCEQ regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill prevention for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
11. 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.
12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.
13. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 5 through 9, and Conclusions of Law Nos. 2 through 6.
14. As evidenced by Findings of Fact Nos. 11 and 12, 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 it is signed by the Commission.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS 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. Secure the dispensers to prevent access;
 - 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. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. 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, including payment of the administrative penalty in full.
3. The USTs at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475(e) 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 corrosion protection violations noted in Conclusions of Law Nos. 2 through 4 have been corrected and Respondent obtains a new fuel delivery certificate for the Facility.
4. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel at the Facility 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.
5. Within 10 days after the effective date of this Order, Respondent shall send the Facility's UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
6. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 13, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e., 4 and 5.
7. 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 this 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
8. Respondent is assessed an administrative penalty in the amount of eight thousand one hundred ninety-five dollars (\$8,195.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the requirements set forth in this Order resolve only 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 violations which are not raised here.
9. The 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 TCEQ and shall be sent with the notation "Re: Lumbini Enterprise LLC dba Neighborhood Food Mart; Docket No. 2019-1551-PST-E" to:

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

10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:
 - a. Begin conducting inspections of the rectifier and other components of the corrosion protection system at least once every 60 days, in accordance with 30 TEX. ADMIN. CODE § 334.49;
 - b. Implement a release detection method for the USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - c. Obtain a new fuel delivery certificate from the TCEQ.
11. 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).
12. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provisions Nos. 10 and 11.
13. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, 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:

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

and: Waste Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

14. All relief not expressly granted in this Order is denied.
15. 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.
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. Extension requests shall be sent to the Order Compliance Team at the address listed above.

17. 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.
18. 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.
19. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
20. 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.
21. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF TAYLOR PEARSON

"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 Lumbini Enterprise LLC dba Neighborhood Food Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 21, 2020.

The EDPRP was mailed to Respondent's last known address on July 21, 2020, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on October 8, 2020.

The EDPRP was mailed to Respondent's last known address on October 8, 2020, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to USPS.com "Track & Confirm" delivery confirmation records, Respondent received notice of the EDPRP on October 9, 2020.

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 March 23, 2022, sent via first class mail and certified mail, return receipt requested article no. 7021 0350 0000 4630 6443, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility be shut down and removed from service if the violations pertaining to release detection and corrosion protection 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 March 26, 2022.

As of the date of this declaration, I am not aware of any evidence that indicates that Respondent has corrected the release detection and corrosion protection violations noted during the September 25, 2019, investigation."

"My name is Taylor Wayne Pearson, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Travis County,
State of Texas,
on the 25th day of April, 2022

A handwritten signature in blue ink that reads "Taylor Pearson". The signature is written in a cursive style and is positioned above a horizontal line.

Declarant