EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1018-AIR-E **TCEQ ID:** RN102190907 **CASE NO.:** 30291

RESPONDENT NAME: Sam's East, Inc.

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	X AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Sam's Club 8280, 11360 Pellicano Drive, El Paso, El Paso County

TYPE OF OPERATION: Discount retailer of gasoline to club members

SMALL BUSINESS: ___ Yes __X__ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on December 18, 2006. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Daniel Siringi, Enforcement Division, Enforcement Section III, MC R-10, (409) 899-8799; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

TCEQ Field Investigator: Ms. Patricia Novelo, El Paso Regional Office, MC R-06, (915) 543-3599

Respondent: Mr. Rich Ezell, Operations Manager, Sam's East, Inc., 608 S.W. 8th Street, Bentonville, Arizona 72716
Mr. David A. Bing, Vice President, Fuel/Tire & Battery Centers, Sam's East, Inc., 608 S.W. 8th Street, Bentonville, Arizona 72716

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** June 9, 2006 **Date of NOE Relating to this Case:** July 14, 2006 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **AIR** Failed to comply with the 7.0 pounds per square inch absolute ("psia") maximum Reid vapor pressure ("RVP") requirement for gasoline transferred during the control period of June 1, 2006 through September 16, 2006 in El Paso County. Specifically, gasoline samples taken from the underground storage tanks ("USTs") on June 9, 2006 had a RVP exceeding the maximum 7.0 psia [30 TEX. ADMIN. CODE § 115.252(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].	**Total Assessed:** $1,020 **Total Deferred:** $204 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $816 **Site Compliance History Classification:** _X_ High __ Avg. __ Poor **Person Compliance History Classification:** __ High _X_ Avg. __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, establish and implement a process which will ensure the RVP for gasoline dispensed between June 1st and September 16th of each year shall not exceed 7.0 psia at the Station; and b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

Attachment: Site Compliance History

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision April 25, 2006*

DATES					
Assigned	17-Jul-2006				
PCW	19-Sep-2006	Screening	19-Jul-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Sam's East, Inc.		
Reg. Ent. Ref. No.	RN102190907		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	30291	No. of Violations	1
Docket No.	2006-1018-AIR-E	Order Type	1660
Media Program(s)	Air Quality	Enf. Coordinator	Daniel Siringi
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $1,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 2% Enhancement *Subtotals 2, 3, & 7* $20

Notes: Enhancement for one (1) NOV without same or similar violations in the past five years at this facility.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5* $0

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

Notes: The Respondent does not meet the good faith criteria.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$8
Approx. Cost of Compliance	$250

SUM OF SUBTOTALS 1-7 Final Subtotal $1,020

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $1,020

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $1,020

DEFERRAL 20% Reduction Adjustment -$204

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

Notes: Deferred offered for expedited settlement.

PAYABLE PENALTY $816

Screening Date	19-Jul-2006	**Docket No.** 2006-1018-AIR-E	**PCW**
Respondent	Sam's East, Inc.		*Policy Revision 2 (September 2002)*
Case ID No.	30291		*PCW Revision April 25, 2006*
Reg. Ent. Reference No.	RN102190907		
Media [Statute]	Air Quality		
Enf. Coordinator	Daniel Siringl		

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action *(number of NOVs meeting criteria)*	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability *(number of orders meeting criteria)*	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 *(number of judgements or consent decrees meeting criteria)*	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 *(number of counts)*	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 *(number of audits for which notices were*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which violations were disclosed)*	0	0%
		Please Enter Yes or No	
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 (1) NOV without same or similar violations in the past five years at this facility.

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

PCW

Policy Revision 2 (September 2002)
PCW Revision April 25, 2006

Screening Date	19-Jul-2006
Docket No.	2006-1018-AIR-E
Respondent	Sam's East, Inc.
Case ID No.	30291
Reg. Ent. Reference No.	RN102190907
Media [Statute]	Air Quality
Enf. Coordinator	Daniel Siringi

Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 115.252(2)
Secondary Rule Cite(s)	Tex. Health & Safety Code § 382.085(b)
Violation Description	Failure to comply with the 7.0 pounds per square inch absolute (psia) maximum Reid vapor pressure ("RVP") requirement for gasoline transferred during the control period of June 1, 2006 through September 16, 2006 in El Paso County. Specifically, gasoline samples taken from the underground storage tanks (USTs) on June 9, 2006 had a RVP exceeding the maximum 7.0 psia.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Human health or the environment has been 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 -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events: 1

40 Number of violation days

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $8

Statutory Limit Test

Violation Final Penalty Total $1,020

This violation Final Assessed Penalty (adjusted for limits) $1,020

Economic Benefit Worksheet

Respondent: Sam's East, Inc.
Case ID No.: 30291
Reg. Ent. Reference No.: RN102190907
Media [Statute]: Air Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling	$250	09-Jun-2006	15-Jan-2007	0.6	$8	n/a	$8
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated cost of implementing procedures to ensure the required Reid vapor pressure is maintained. Date required is the investigation date and the final date is estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance: $250

TOTAL: $8

Compliance History

Customer/Respondent/Owner-Operator:	CN600761597	Sam's East, Inc.	Classification: AVERAGE	Rating: 3.69
Regulated Entity:	RN102190907	SAMS CLUB 8280	Classification: AVERAGE	Site Rating: 0.43
ID Number(s):	USED OIL		REGISTRATION	C82359
	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	72828
	AIR NEW SOURCE PERMITS		ACCOUNT NUMBER	EE2179I
Location:	11360 PELLICANO DR, EL PASO, TX, 79936		Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	January 24, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 24, 2002 to January 24, 2007			

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

Name: Daniel Siringi Phone: (409) 899-8799

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 of the site during the compliance period?	Yes
3. If Yes, who is the current owner?	Sam's East, Inc.
4. if Yes, who was/were the prior owner(s)?	Wal--Mart Stores, Inc. Wal-Mart Stores, Inc.
5. When did the change(s) in ownership occur?	09/18/2006

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

1	03/25/2002	(75789)
2	08/31/2003	(152811)
3	01/20/2006	(436947)
4	08/17/2002	(3780)
5	05/25/2004	(270282)
6	03/30/2006	(455299)
7	11/06/2002	(15874)
8	08/22/2002	(2844)
9	07/28/2004	(281193)
10	08/14/2006	(497169)
11	07/14/2006	(486766)
12	10/19/2004	(338071)
13	12/16/2005	(437488)
14	02/16/2006	(456025)

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

N/A

Date: 12/12/2005 (436947)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)[G]

Description: Failure to verify proper operation of the Stage II equipment at least once every twelve months.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)[G]

Description: Failure to maintain the StageII vapor recovery system in proper operating

conditions.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
SAM'S EAST, INC.	§	
RN102190907	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-1018-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Sam's East, Inc. ("Sam's") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Sam's appear before the Commission and together stipulate that:

1. Sam's operates a discount retailer of gasoline to club members at 11360 Pellicano Drive in El Paso, El Paso County, Texas (the "Station").

2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. The Commission and Sam's agree that the Commission has jurisdiction to enter this Agreed Order, and that Sam's is subject to the Commission's jurisdiction.

4. Sam's received notice of the violations alleged in Section II ("Allegations") on or about July 19, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Sam's of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of One Thousand Twenty Dollars ($1,020) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Sam's has paid Eight Hundred Sixteen Dollars ($816) of the administrative penalty and Two Hundred Four Dollars ($204) is deferred contingent upon Wal-Mart's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Sam's fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Sam's to pay all or part of the deferred penalty.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and Sam's have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

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 Sam's has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As operator of the Station, Sam's is alleged to have failed to comply with the 7.0 pounds per square inch absolute (psia) maximum Reid vapor pressure ("RVP") requirement for gasoline transferred during the control period of June 1, 2006 through September 16, 2006 in El Paso County, in violation of 30 TEX. ADMIN. CODE § 115.252(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 9, 2006. Specifically, gasoline samples taken from the underground storage tanks (USTs) on June 9, 2006 had a RVP exceeding the maximum 7.0 psia.

III. DENIALS

Sam's generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Sam's pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Sam's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Sam's East, Inc., Docket No. 2006-1018-AIR-E" to:

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

2. It is further ordered that Sam's shall undertake the following technical requirements:

a. Within 30 days after the effective date of this Agreed Order, establish and implement a process which will ensure the RVP for gasoline dispensed between June 1st and September 16th of each year shall not exceed 7.0 psia at the Station;

b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

The certification shall be notarized by a State of Texas Notary Public and 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."

c. Submit all correspondence, reports, and documentation required by these Ordering Provisions to:

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

with a copy to:

Manager, Air Section
El Paso Regional Office
Texas Commission on Environmental Quality
401 E. Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

3. The provisions of this Agreed Order shall apply to and be binding upon Sam's. Sam's is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

4. If Sam's 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, Sam's failure to comply is not a violation of this Agreed Order. Sam's shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Sam's shall notify the Executive Director within seven days after Sam's becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Sam's shall be made in writing to the Executive Director. Extensions are not effective until Sam's receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against Sam's in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Sam's, or three days after the date on which the Commission mails notice of the Order to Sam's, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 1/29/07
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ 10-2-6
Signature Date

David A. Bing VP, Fuel/Tire & Battery Centers
Name (Printed or typed) Title
Authorized Representative of
Sam's East, Inc.

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.