EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-0450-PST-E **TCEQ ID:** RN100812510 **CASE NO.:** 29208

RESPONDENT NAME: Gas Mart U.S.A., 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	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	X 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: Gas Mart U.S.A., 401 South Santa Fe Street, El Paso, El Paso County

TYPE OF OPERATION: Convenience store with retails sales of gasoline

SMALL BUSINESS: __X__ Yes ___ 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 February 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-5690; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Respondent: Ms. Teresa Cardenas, President/Registered Agent, Gas Mart U.S.A., Inc., 401 South Santa Fe Street, El Paso, Texas 79901

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

RESPONDENT'S NAME: Gas Mart U.S.A., Inc.
DOCKET NO.: 2006-0450-PST-E

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:** February 28, 2006 **Date of NOE Relating to this Case:** April 11, 2006 (NOE) **Background Facts:** This was a routine investigation. Six violations were documented. **WASTE** 1) Failed to provide a release detection method capable of detecting a release from any portion of the underground storage tank ("UST") system which contained regulated substances including the tanks, piping, and other ancillary equipment. Specifically, at the time of the investigation, the automatic tank gauging console was not functional [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)]. 2) Failed to provide proper release detection for the piping associated with the UST system. Specifically, Gas Mart U.S.A. did not conduct monthly monitoring or annual piping tightness test [30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a)]. 3) Failed to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)]. 4) Failed to conduct reconciliation of detailed inventory control records at least once a month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].	**Total Assessed:** $5,715 **Total Deferred:** $1,143 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $197 (remaining $4,375 due in 35 monthly payments of $125 each) **Site Compliance History Classification:** __ High _X_ Avg. __ Poor **Person Compliance History Classification:** __ High _X_ Avg. __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that Gas Mart U.S.A. has implemented the following corrective measures at the Facility: a. Submitted documentation to the TCEQ verifying that the USTs had been numbered properly on April 3, 2006; b. Submitted documentation to the TCEQ verifying that the line leak detector for the regular unleaded fuel had been successfully tested on March 21, 2006; and c. Submitted overfill prevention records and verification of shear valves to the TCEQ on April 4, 2006. **Ordering Provisions:** 2) The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order: i. Begin conducting proper inventory control procedures for all USTs at the Facility; and ii. Begin maintaining all records pertaining to the UST system. b. Within 30 days after the effective date of this Agreed Order, install and implement a release detection system for all USTs at the Facility; and c. Within 45 days after the effective date of this Agreed Order, submit written certification and including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2.a.i. through 2.b.

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
5) Failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ. Specifically, records for composition of tanks, overfill prevention, financial assurance and shear tanks were not available [30 TEX. ADMIN. CODE § 334.10(b)]. 6) Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].		

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	17-Apr-2006				
PCW	24-Oct-2006	Screening	26-Apr-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Gas Mart U.S.A., Inc.		
Reg. Ent. Ref. No.	RN100812510		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	29208	No. of Violations	3
Docket No.	2006-0450-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $4,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 27% Enhancement *Subtotals 2, 3, & 7* $1,215

Notes: Enhancement for one NOV without same or similar violations and one default order issued against a previous owner.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The respondent does not meet the 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	$1,418
Approx. Cost of Compliance	$2,950

SUM OF SUBTOTALS 1-7 Final Subtotal $5,715

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 $5,715

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $5,715

DEFERRAL 20% Reduction Adjustment -$1,143

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $4,572

Screening Date	26-Apr-2006	**Docket No.** 2006-0450-PST-E	**PCW**
Respondent	Gas Mart U.S.A., Inc.		*Policy Revision 2 (September 2002)*
Case ID No.	29208		*PCW Revision May 19, 2005*
Reg. Ent. Reference No.	RN100812510		
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 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	1	25%
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) **27%**

>> 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 without same or similar violations and one default order issued against a previous owner.

Total Adjustment Percentage (Subtotals 2, 3, & 7) **27%**

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	26-Apr-2006
Docket No.	2006-0450-PST-E
Respondent	Gas Mart U.S.A., Inc.
Case ID No.	29208
Reg. Ent. Reference No.	RN100812510
Media [Statute]	Petroleum Storage Tank
Enf. Coordinator	Thomas Greimel
Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.50(a)(1)(A), 334.50(b)(2), 334.50(b)(2)(A)(i)(III) and 334.50(d)(1)(B)(ii)
Secondary Rule Cite(s)	Tex. Water Code § 26.3475(a) and (c)(1)
Violation Description	Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other ancillary equipment. Specifically, at the time of the investigation, the automatic tank gauge console was not functional. Failed to provide release detection for the piping associated with the UST system. Specifically, the respondent did not conduct monthly monitoring or annual piping tightness test. Failed to test the line leak detectors at least once per year for performance and operational reliability. Also, the respondent failed to conduct reconciliation of detailed inventory control records at least once a month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons.

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

Matrix Notes: Failing to monitor the UST system for releases could expose human health or the environment to pollutants which would exceed levels that are protective of human health or environmental receptor.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 1

mark only one use a small x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommended from the investigation date of February 28, 2006 to the screening date of April 26, 2006.

Economic Benefit (EB) for this violation

Estimated EB Amount $51

Statutory Limit Test

Violation Final Penalty Total $3,175

This violation Final Assessed Penalty (adjusted for limits) $3,175

Economic Benefit Worksheet

Respondent: Gas Mart U.S.A., Inc.
Case ID No.: 29208
Reg. Ent. Reference No.: RN100812510
Media [Statute]: Petroleum Storage Tank
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)	$250	28-Feb-2006	21-Mar-2006	0.1	$0	$1	$1
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				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$1,200	28-Feb-2006	28-Dec-2006	0.8	$50	n/a	$50

Notes for DELAYED costs: Estimated cost to test the line leak detectors. Date Required is the date of investigation. Final date is the date of compliance. Estimated cost to provide release detection for the UST system. Date Required is the date of investigation. Final date is the estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	$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: $1,450

TOTAL: $51

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	26-Apr-2006
Docket No.	2006-0450-PST-E
Respondent	Gas Mart U.S.A., Inc.
Case ID No.	29208
Reg. Ent. Reference No.	RN100812510
Media [Statute]	Petroleum Storage Tank
Enf. Coordinator	Thomas Greimel
Violation Number	2
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.10(b)
Secondary Rule Cite(s)	
Violation Description	Failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ. Specifically, records for composition of tanks, overfill prevention, financial assurance, and shear valves were not available.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: More than 70% of the rule requirement was not met.

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events: 1

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 based on the February 28, 2006 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $2

Statutory Limit Test

Violation Final Penalty Total $1,270

This violation Final Assessed Penalty (adjusted for limits) $1,270

Economic Benefit Worksheet

Respondent: Gas Mart U.S.A., Inc.
Case ID No.: 29208
Reg. Ent. Reference No.: RN100812510
Media [Statute]: Petroleum Storage Tank
Violation No.: 2

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)	$50	28-Feb-2006	04-Apr-2006	0.1	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System	$50	28-Feb-2006	01-Nov-2006	0.7	$2	n/a	$2
Training/Sampling				0.0	$0	n/a	$0
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 to maintain overfill and shear valve records at the Facility. Date Required is the date of the investigation. Final Date is the date of compliance. Estimated cost to maintain required documents at the Facility. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	$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: $100

TOTAL: $2

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	26-Apr-2006
Docket No.	2006-0450-PST-E
Respondent	Gas Mart U.S.A., Inc.
Case ID No.	29208
Reg. Ent. Reference No.	RN100812510
Media [Statute]	Petroleum Storage Tank
Enf. Coordinator	Thomas Greimel
Violation Number	3
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.8(c)(5)(C)
Secondary Rule Cite(s)	
Violation Description	Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment -$9,000

Base Penalty Subtotal $1,000

Violation Events

Number of Violation Events: 1

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 based on the February 28, 2006 investigation.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $1,270

This violation Final Assessed Penalty (adjusted for limits) $1,270

Economic Benefit Worksheet

Respondent: Gas Mart U.S.A., Inc.
Case ID No.: 29208
Reg. Ent. Reference No.: RN100812510
Media [Statute]: Petroleum Storage Tank
Violation No.: 3

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				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$100	28-Feb-2006	03-Apr-2006	0.1	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to label the tank fill ports. Date Required is the date of investigation and the Final Date is the 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: $100

TOTAL: $0

Compliance History

Customer/Respondent/Owner-Operator:	CN603041690	Gas Mart U. S. A., Inc.	Classification: AVERAGE	Rating: 7.15
Regulated Entity:	RN100812510	GAS MART USA	Classification: AVERAGE	Site Rating: 7.15
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION		ACCOUNT NUMBER REGISTRATION	EE0956R 11757
Location:	401 S SANTA FE ST, EL PASO, TX, 79901		Rating Date: 9/1/2005 Repeat Violator: NO	
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	June 05, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 05, 2001 to June 05, 2006			

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

Name: Christina J. Martinez Phone: (512) 239-0739

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? S & J Stores, Inc.
4. if Yes, who was/were the prior owner(s)? Family Financial Group, Inc.; Harann Investments, Inc.
5. When did the change(s) in ownership occur? 07/18/2005

Components (Multimedia) for the Site :

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

Effective Date: 06/23/2001 ADMINORDER 1999-0538-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.241
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failed to install an approved Stage II vapor recovery system.

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 07/14/2003 (140904)
2 04/10/2006 (457547)
3 05/29/2003 (37875)
4 12/12/2002 (18873)
5 05/17/2005 (371680)
6 08/13/2002 (2913)
7 06/11/2001 (73004)
8 07/31/2001 (73005)
9 11/05/2001 (73006)
10 02/11/2002 (73007)

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

Date: 05/28/2003 (37875)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(1)

Description: Failure to conduct Daily inspections.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)

Description: Failure to conduct monthly inspections.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.248(2)

Description: Failure to train a new facitly representative within three months of the departure of the previously trained employee.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.248(1)[G]

Description: Failure to train the employees in the operation and maintance of the Stage II Vapor Recovery System.

Self Report? NO Classification: Moderate

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

Description: Failure to conduct the Pressure Decay and the A/L test within the preceding 12 months.

Self Report? NO Classification: Moderate

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

Description: Failure to conduct a Full system test

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**
GAS MART U.S.A., INC.	§	
RN100812510	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-0450-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Gas Mart U.S.A., Inc. ("Gas Mart U.S.A.") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Gas Mart U.S.A. appear before the Commission and together stipulate that:

1. Gas Mart U.S.A. operates a convenience store with retails sales of gasoline at 401 South Santa Fe Street in El Paso, El Paso County, Texas (the "Facility").

2. The two underground storage tanks ("USTs") at the Facility are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and Gas Mart U.S.A. agree that the Commission has jurisdiction to enter this Agreed Order, and that Gas Mart U.S.A. is subject to the Commission's jurisdiction.

4. Gas Mart U.S.A. received notice of the violations alleged in Section II ("Allegations") on or about April 16, 2006.

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

6. An administrative penalty in the amount of Five Thousand Seven Hundred Fifteen Dollars ($5,715) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Gas Mart U.S.A. has paid One Hundred Ninety-Seven Dollars ($197) of the administrative penalty and One Thousand One Hundred Forty-Three Dollars ($1,143) is deferred contingent upon Gas Mart U.S.A.'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 Gas Mart

U.S.A. fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Gas Mart U.S.A. to pay all or part of the deferred penalty.

The remaining amount of Four Thousand Three Hundred Seventy-Five Dollars ($4,375) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Twenty-Five Dollars ($125) each. The next 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 Gas Mart U.S.A. fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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 failure of Gas Mart U.S.A. to meet the payment schedule of this Agreed Order constitutes the failure by Gas Mart U.S.A. to timely and satisfactorily comply with all the terms of this Agreed Order.

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 Gas Mart U.S.A. have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that Gas Mart U.S.A. has implemented the following corrective measures at the Facility:

   a. Submitted documentation to the TCEQ verifying that the USTs had been numbered properly on April 3, 2006;

   b. Submitted documentation to the TCEQ verifying that the line leak detector for the regular unleaded fuel had been successfully tested on March 21, 2006; and

   c. Submitted overfill prevention records and verification of shear valves to the TCEQ on April 4, 2006.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Gas Mart U.S.A. has not complied with one or more of the terms or conditions in this Agreed Order.

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

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

II. ALLEGATIONS

As operator of the Facility, Gas Mart U.S.A. is alleged to have:

1. Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other ancillary equipment, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on February 28, 2006. Specifically, at the time of the investigation, the automatic tank gauging console was not functional.

2. Failed to provide proper release detection for the piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on February 28, 2006. Specifically, Gas Mart U.S.A. did not conduct monthly monitoring or annual piping tightness test.

3. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on February 28, 2006.

4. Failed to conduct reconciliation of detailed inventory control records at least once a month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on February 28, 2006.

5. Failed to have required UST records maintained, readily accessible and available for inspection upon request by a representative of the TCEQ, in violation of 30 TEX. ADMIN. CODE § 334.10(b), as documented during an investigation conducted on February 28, 2006. Specifically, records for composition of tanks, overfill prevention, financial assurance and shear tanks were not available.

6. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), as documented during an investigation conducted on February 28, 2006.

III. DENIALS

Gas Mart U.S.A. generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Gas Mart U.S.A. pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Gas Mart U.S.A.'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: Gas Mart U.S.A., Inc., Docket No. 2006-0450-PST-E" to:

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

2. It is further ordered that Gas Mart U.S.A. shall undertake the following technical requirements:

a. Immediately upon the effective date of this Agreed Order:

i. Begin conducting proper inventory control procedures for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.48; and

ii. Begin maintaining all records pertaining to the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.10.

b. Within 30 days after the effective date of this Agreed Order, install and implement a release detection system 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, submit written certification as described below, and including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2.a.i. through 2.b.

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."

The certification shall be submitted 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:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 East Franklin Avenue, Suite 506
El Paso, Texas 79901-1212

3. The provisions of this Agreed Order shall apply to and be binding upon Gas Mart U.S.A.. Gas Mart U.S.A. is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If Gas Mart U.S.A. 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, Gas Mart U.S.A.'s failure to comply is not a violation of this Agreed Order. Gas Mart U.S.A. shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Gas Mart U.S.A. shall notify the Executive Director within seven days after Gas Mart U.S.A. 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 Gas Mart U.S.A. shall be made in writing to the Executive Director. Extensions are not effective until Gas Mart U.S.A. 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 Gas Mart U.S.A. 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 Gas Mart U.S.A., or three days after the date on which the Commission mails notice of the Order

to Gas Mart U.S.A., 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

For the Executive Director

4/3/07
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.

Signature

3/27/07
Date

TERESA CARDENAS
Name (Printed or typed)
Authorized Representative of
Gas Mart U.S.A. Inc.

PRESIDENT
Title

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