

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1447-PST-E **TCEQ ID:** RN102064698 **CASE NO.:** 34528

RESPONDENT NAME: Petroleum Wholesale, L.P. dba Sunmart 401

| | | |
|---|---|--|
| ORDER TYPE: | | |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Sunmart 401, 14001 West I-30, Fort Worth, Tarrant County</p> <p>TYPE OF OPERATION: Convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is one additional pending enforcement action regarding this facility location, Docket No. 2005-0912-PST-E.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 22, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Stuart W. Lapp, General Counsel, Petroleum Wholesale, L.P., 2189 Lake Woodlands Drive, The Woodlands, Texas 77380 Respondent's Attorney: Not represented by counsel on this enforcement matter</p> | | |

VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|--|---|--|
| <p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 27, 2007</p> <p>Date of NOV/NOE Relating to this Case: August 2, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation. Three violations were documented.</p> <p>WASTE</p> <p>1) Failure to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems [30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failure to successfully complete annual and triennial Stage II testing within the preceding 12 months and 36 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>3) Failure to maintain the Stage II vapor recovery system in proper operating condition [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> | <p>Total Assessed: \$4,150</p> <p>Total Deferred: \$830 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$3,320</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>1) Within 30 days after the effective of this Agreed Order:</p> <p>a. Upgrade the Stage II vapor recovery system by installing an approved ORVR compatible system;</p> <p>b. Conduct annual and triennial testing on the Stage II equipment;</p> <p>c. Begin maintaining the Stage II vapor recovery system in proper operating condition, by successfully passing the Pressure Decay and Dynamic Back-Pressure test; and</p> <p>2) 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 No. 1.</p> |



Penalty Calculation Worksheet (PCW)

PCW Revision May 25, 2007

Policy Revision 2 (September 2002)

| | | | | | | |
|----------------------|----------|------------|-----------|-------------|---------|--|
| TCEQ DATES | Assigned | 6-Aug-2007 | Screening | 10-Aug-2007 | EPA Due | |
| | PCW | 9-Sep-2007 | | | | |

| | | | |
|--|---|--------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | Petroleum Wholesale, L.P. dba Sunmart 401 | | |
| Reg. Ent. Ref. No. | RN102064698 | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

| | | | | |
|-------------------------|------------------------|-------------------|-------------------|----------|
| CASE INFORMATION | | | | |
| Enf./Case ID No. | 34528 | No. of Violations | 3 | |
| Docket No. | 2007-1447-PST-E | Order Type | 1660 | |
| Media Program(s) | Petroleum Storage Tank | Enf. Coordinator | Cheryl Thompson | |
| Multi-Media | | EC's Team | EnforcementTeam 3 | |
| Admin. Penalty \$ | Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

| | | |
|---|------------|---------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$3,000 |
|---|------------|---------|

| | | |
|--|---|---------------------|
| ADJUSTMENTS (+/-) TO SUBTOTAL 1 | | |
| Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage. | | |
| Compliance History | 5% Enhancement | Subtotals 2, 3, & 7 |
| Notes | The Respondent received one NOV for the same or similar violations. | \$150 |

| | | | | |
|--------------------|----|----------------|------------|-----|
| 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 x) |

| | | | |
|-------|---|------------|-----|
| Notes | The Respondent does not meet the good faith criteria. | Subtotal 6 | \$0 |
|-------|---|------------|-----|

| | | |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts | \$1,368 | 0% Enhancement* |
| Approx. Cost of Compliance | \$3,300 | *Capped at the Total EB \$ Amount |

| | | |
|-----------------------------|----------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$3,150 |
|-----------------------------|----------------|---------|

| | | |
|---|------------|---------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | Adjustment | \$1,000 |
|---|------------|---------|

| | | | |
|-------|---|----------------------|---------|
| Notes | Recommend a penalty enhancement to recover the avoided cost associated with Violation #2. | Final Penalty Amount | \$4,150 |
|-------|---|----------------------|---------|

| | | |
|-----------------------------------|------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$4,150 |
|-----------------------------------|------------------------|---------|

| | | | |
|-----------------|---------------|------------|--------|
| DEFERRAL | 20% Reduction | Adjustment | -\$830 |
|-----------------|---------------|------------|--------|

| | |
|-------|--|
| Notes | Deferral offered for expedited settlement. |
|-------|--|

| | | |
|------------------------|--|---------|
| PAYABLE PENALTY | | \$3,320 |
|------------------------|--|---------|

| | | | | |
|--------------------------------|--|-------------------|-----------------|------------------------------------|
| Screening Date | 10-Aug-2007 | Docket No. | 2007-1447-PST-E | PCW |
| Respondent | Petroleum Wholesale, L.P.. dba Sunmart 401 | | | Policy Revision 2 (September 2002) |
| Case ID No. | 34528 | | | PCW Revision May 25, 2007 |
| Reg. Ent. Reference No. | RN102064698 | | | |
| Media [Statute] | Petroleum Storage Tank | | | |
| Enf. Coordinator | Cheryl Thompson | | | |

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) | 1 | 5% |
| | Other written NOVs | 0 | 0% |
| 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 submitted) | 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% |
| <i>Please Enter Yes or No</i> | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 5%

>> **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 The Respondent received one NOV for the same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 10-Aug-2007

Docket No. 2007-1447-PST-E

PCW

Respondent Petroleum Wholesale, L.P. dba Sunmart 401

Policy Revision 2 (September 2002)

Case ID No. 34528

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102064698

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 115.242(1)(C) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems.

Base Penalty

>> Environmental, Property and Human Health Matrix

| Release | Harm | | | Percent |
|-----------|----------------------|---|----------------------|----------------------------------|
| | Major | Moderate | Minor | |
| Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="10%"/> |
| Potential | <input type="text"/> | <input checked="" type="text" value="x"/> | <input type="text"/> | |

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor | Percent |
|----------------------|----------------------|----------------------|----------------------|---------------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="0%"/> |

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One quarterly event is recommended from the period of July 27, 2007 (date of investigation) to August 10, 2007 (date of screening).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: Petroleum Wholesale, L.P. dba Sunmart 401
Case ID No.: 34528
Reg. Ent. Reference No.: RN102064698
Media: Petroleum Storage Tank
Violation No.: 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|---------|-------------|-------------|-----|-----|-------|-------|
| Equipment | \$2,000 | 27-Jul-2007 | 30-Apr-2008 | 0.8 | \$5 | \$102 | \$107 |
| 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) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to upgrade the Stage II equipment to ORVR compatible systems. The date required is the date of the investigation and the final date is the projected 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

\$2,000

TOTAL

\$107

Screening Date 10-Aug-2007 **Docket No.** 2007-1447-PST-E **PCW**
Respondent Petroleum Wholesale, L.P. dba Sunmart 401 *Policy Revision 2 (September 2002)*
Case ID No. 34528 *PCW Revision May 25, 2007*
Reg. Ent. Reference No. RN102064698
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Cheryl Thompson

Violation Number
Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)
Violation Description Failed to successfully complete annual and triennial Stage II testing within the preceding 12 months and 36 months.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | | Percent |
|-----------|----------------------|---|----------------------|----------------------------------|
| | Major | Moderate | Minor | |
| Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="10%"/> |
| Potential | <input type="text"/> | <input checked="" type="text" value="x"/> | <input type="text"/> | |

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor | Percent |
|----------------------|----------------------|----------------------|----------------------|---------------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="0%"/> |

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or the environment.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

| | |
|--------------|---|
| daily | <input type="text"/> |
| monthly | <input type="text"/> |
| quarterly | <input type="text"/> |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input checked="" type="text" value="x"/> |

Violation Base Penalty

One single event is recommended for the three year period preceding the investigation conducted on July 27, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: Petroleum Wholesale, L.P. dba Sunmart 401
Case ID No.: 34528
Reg. Ent. Reference No.: RN102064698
Media: Petroleum Storage Tank
Violation No.: 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 6.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

No commas or \$

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) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|---------|-------------|-------------|-----|-------|---------|---------|
| Disposal | | | | 0.0 | \$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] | \$1,000 | 27-Jul-2004 | 27-Jul-2007 | 3.9 | \$196 | \$1,000 | \$1,196 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Avoided costs for Stage II testing. Date required is three years prior to investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,196

Docket No. 2007-1447-PST-E

PCW

Policy Revision 2 (September 2002)
PCW Revision May 25, 2007

Screening Date 10-Aug-2007

Respondent Petroleum Wholesale, L.P. dba Sunmart 401

Case ID No. 34528

Reg. Ent. Reference No. RN102064698

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Cheryl Thompson

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 115.242(3) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to maintain the Stage II vapor recovery system in proper operating condition. Specifically, at the time of the investigation test records indicated that the facility had not successfully passed the Pressure Decay test since December 15, 2003. Also the 2007 test results indicated that the Pressure Decay and Dynamic Back-Pressure tests both failed.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | |
|-----------|----------------------|-------------------------------------|----------------------|
| | Major | Moderate | Minor |
| Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Potential | <input type="text"/> | <input checked="" type="checkbox"/> | <input type="text"/> |

Percent

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

Percent

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x

| | |
|--------------|-------------------------------------|
| daily | <input type="text"/> |
| monthly | <input type="text"/> |
| quarterly | <input checked="" type="checkbox"/> |
| semiannual | <input type="text"/> |
| annual | <input type="text"/> |
| single event | <input type="text"/> |

Violation Base Penalty

One quarterly event is recommended from the period of July 27, 2007 (date of investigation) to August 10, 2007 (date of screening).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Petroleum Wholesale, L.P. dba Sunmart 401
Case ID No. 34528
Reg. Ent. Reference No. RN102064698
Media Petroleum Storage Tank
Violation No. 3

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|-------|-------------|-------------|-----|------|-----|------|
| Equipment | | | | 0.0 | \$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 | \$300 | 15-Dec-2003 | 30-Apr-2008 | 4.4 | \$66 | n/a | \$66 |
| 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 successfully perform testing of the Stage II vapor recovery system. The date required is the inspection date. Final date is the projected 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

\$300

TOTAL

\$66

Compliance History

| | | | | |
|---|--|---------------------------|-------------------------|-------------------|
| Customer/Respondent/Owner-Operator: | CN601542616 | Petroleum Wholesale, L.P. | Classification: Average | Rating: 2.44 |
| Regulated Entity: | RN102064698 | SUNMART 401 | Classification: Average | Site Rating: 2.25 |
| ID Number(s): | PETROLEUM STORAGE TANK REGISTRATION | | REGISTRATION | 942 |
| Location: | 14001 W I30, FORT WORTH, TX, | | | |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | | |
| Date Compliance History Prepared: | September 13, 2007 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | September 13, 2002 to September 13, 2007 | | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | | |
| Name: | Cheryl Thompson | Phone: | (817)588-5886 | |

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? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

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 04/21/2005 (371932)
 - 2 06/22/2007 (559190)
 - 3 08/02/2007 (570270)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 06/22/2007 (559190)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)
 - Description: The facility's fuel dispensing system is not ORVR compatible.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)[G]
 - Description: Failure to successfully complete annual and triennial testing within the previous 12 months and 36 months respectively.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)[G]
 - Description: Operating an impaired system.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
PETROLEUM WHOLESALE, L.P.
DBA SUNMART 401
RN102064698**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1447-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 Petroleum Wholesale, L.P. dba Sunmart 401 ("Petroleum Wholesale, L.P.") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Petroleum Wholesale, L.P. appear before the Commission and together stipulate that:

1. Petroleum Wholesale, L.P. owns and operates a convenience store with retail sales of gasoline at 14001 West Interstate 30 in Fort Worth, Tarrant County, Texas (the "Station").
2. Petroleum Wholesale, L.P.'s two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Petroleum Wholesale, L.P. agree that the Commission has jurisdiction to enter this Agreed Order, and that Petroleum Wholesale, L.P. is subject to the Commission's jurisdiction.
4. Petroleum Wholesale, L.P. received notice of the violations alleged in Section II ("Allegations") on or about August 7, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Petroleum Wholesale, L.P. of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

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6. An administrative penalty in the amount of Four Thousand One Hundred Fifty Dollars (\$4,150) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Petroleum Wholesale, L.P. has paid Three Thousand Three Hundred Twenty Dollars (\$3,320) of the administrative penalty and Eight Hundred Thirty Dollars (\$830) is deferred contingent upon Petroleum Wholesale, L.P.'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 Petroleum Wholesale, L.P. fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Petroleum Wholesale, L.P. 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 Petroleum Wholesale, L.P. 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 Petroleum Wholesale, L.P. 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 owner and operator of the Station, Petroleum Wholesale, L.P. is alleged to have:

1. Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems, in violation of 30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 27, 2007.
2. Failed to successfully complete annual and triennial Stage II testing within the preceding 12 months and 36 months, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 27, 2007.
3. Failed to maintain the Stage II vapor recovery system in proper operating condition, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b) as documented during an investigation conducted on July 27, 2007.

III. DENIALS

Petroleum Wholesale, L.P. generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Petroleum Wholesale, L.P. pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Petroleum Wholesale, L.P.'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: Petroleum Wholesale, L.P. dba Sunmart 401, Docket No. 2007-1447-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 Petroleum Wholesale, L.P. shall undertake the following technical requirements:
 - a. Within 30 days after the effective of this Agreed Order:
 - i. Upgrade the Stage II vapor recovery system by installing an approved ORVR compatible system, in accordance with 30 TEX. ADMIN. CODE § 115.242;
 - ii. Conduct annual and triennial testing on the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245;
 - iii. Begin maintaining the Stage II vapor recovery system in proper operating condition, by successfully passing the Pressure Decay and Dynamic Back-Pressure test, in accordance with 30 TEX. ADMIN. CODE § 115.242; and
 - 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."

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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2301 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Petroleum Wholesale, L.P. Petroleum Wholesale, L.P. is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If Petroleum Wholesale, L.P. 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, Petroleum Wholesale, L.P.'s failure to comply is not a violation of this Agreed Order. Petroleum Wholesale, L.P. shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Petroleum Wholesale, L.P. shall notify the Executive Director within seven days after Petroleum Wholesale, L.P. 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 Petroleum Wholesale, L.P. shall be made in writing to the Executive Director. Extensions are not effective until Petroleum Wholesale, L.P. 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 Petroleum Wholesale, L.P. 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 Petroleum Wholesale, L.P., or three days after the date on which the Commission mails notice of the Order to Petroleum Wholesale, L.P., 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

John S. Sullivan

For the Executive Director

Date 1/23/2008

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Stuart W. Lapp

Signature

Date 10/26/07

Stuart W. Lapp

Name (Printed or typed)
Authorized Representative of
Petroleum Wholesale, L.P. dba Sunmart 401

Title General Counsel

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.

