# EXECUTIVE SUMMARY - ENFORCEMENT MATTER



**DOCKET NO.:** 2008-1344-PST-E **TCEQ ID:** RN101546588 **CASE NO.:** 36400

**RESPONDENT NAME:** G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3

| ORDER TYPE: | | |
|---|---|---|
| X 1660 AGREED ORDER | __FINDINGS AGREED ORDER | __FINDINGS ORDER FOLLOWING SOAH HEARING |
| __FINDINGS DEFAULT ORDER | __SHUTDOWN ORDER | __IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| __AMENDED ORDER | __EMERGENCY ORDER | |
| CASE TYPE: | | |
| __AIR | __MULTI-MEDIA (check all that apply) | __INDUSTRIAL AND HAZARDOUS WASTE |
| __PUBLIC WATER SUPPLY | X PETROLEUM STORAGE TANKS | __OCCUPATIONAL CERTIFICATION |
| __WATER QUALITY | __SEWAGE SLUDGE | __UNDERGROUND INJECTION CONTROL |
| __MUNICIPAL SOLID WASTE | __RADIOACTIVE WASTE | __DRY CLEANER REGISTRATION |

**SITE WHERE VIOLATION(S) OCCURRED:** Sunny's Food Mart 3, 2997 North Stemmons Freeway, Lewisville, Denton County

**TYPE OF OPERATION:** Convenience store with retail 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 2, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None

**TCEQ Enforcement Coordinator:** Mr. Steven Lopez, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-1896; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

**Respondent:** Mr. Karim Juma, Director/President, G & J INTERNATIONAL, INC., 2997 North Stemmons Freeway, Lewisville, Texas 75077-1746

**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:**<br>__ Complaint<br>X Routine<br>__ Enforcement Follow-up<br>__ Records Review<br><br>**Date(s) of Complaints Relating to this Case:** None<br><br>**Date of Investigation Relating to this Case:** July 25, 2008<br><br>**Date of NOV/NOE Relating to this Case:** August 8, 2008 (NOE)<br><br>**Background Facts:** This was a routine investigation.<br><br>**WASTE**<br><br>1) Failure to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].<br><br>2) Failure to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual testing had not been conducted [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].<br><br>3) 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)].<br><br>4) Failure to maintain the Stage II equipment in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order and free of defects that would impair the effectiveness of the system. Specifically, the swivel adapters were not installed on the dry break or the | **Total Assessed:** $4,700<br><br>**Total Deferred:** $940<br>X Expedited Settlement<br><br>__Financial Inability to Pay<br><br>**SEP Conditional Offset:** $0<br><br>**Total Paid (Due) to General Revenue:** $160 (remaining $3,600 due in 18 monthly payments of $200 each)<br><br>**Site Compliance History Classification**<br>X **High** __ **Average** __ **Poor**<br><br>**Person Compliance History Classification**<br>X **High** __ **Average** __ **Poor**<br><br>**Major Source:** __ Yes X No<br><br>**Applicable Penalty Policy:** September 2002 | **Corrective Actions Taken:**<br><br>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:<br><br>a. Completed certified Stage II representative training and all current employees received in-house Stage II vapor recovery training on August 20, 2008;<br><br>b. Tested the Stage II vapor recovery system on August 21, 2008, with passing results;<br><br>c. Upgraded the Stage II equipment to ORVR compatible systems on August 10, 2008;<br><br>d. Installed swivel adapters on the dry break and the fill ports on August 21, 2008; and<br><br>e. Posted operating instruction on the front of each gasoline dispensing pump equipped with Stage II equipment on August 21, 2008. |

| | | |
|---|---|---|
| fill ports [30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].<br><br>5) Failure to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with Stage II equipment [30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. | | |

Additional ID No(s).: 960

# Penalty Calculation Worksheet (PCW)

*Policy Revision 2 (September 2002)* — *PCW Revision June 12, 2008*

TCEQ

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 11-Aug-2008 | | | | |
| PCW | 29-Aug-2008 | Screening | 14-Aug-2008 | EPA Due | |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3 | | |
| Reg. Ent. Ref. No. | RN101546588 | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 36400 | No. of Violations | 3 |
| Docket No. | 2008-1344-PST-E | Order Type | 1660 |
| Media Program(s) | Petroleum Storage Tank | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Steven Lopez |
| | | 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* $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** -10.0% Reduction — *Subtotals 2, 3, & 7* -$450

Notes: Reduction due to high performer classification.

**Culpability** No — 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** — *Subtotal 5* $450

**Economic Benefit** — 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $1,110
Approx. Cost of Compliance $4,200

**Capped at the Total EB $ Amount*

**SUM OF SUBTOTALS 1-7** — *Final Subtotal* $3,600

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 30.6% — *Adjustment* $1,100

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

*Final Penalty Amount* $4,700

**STATUTORY LIMIT ADJUSTMENT** — *Final Assessed Penalty* $4,700

**DEFERRAL** 20.0% Reduction — *Adjustment* -$940

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** $3,760

**Screening Date** 14-Aug-2008 **Docket No.** 2008-1344-PST-E **PCW**

**Respondent** G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3

*Policy Revision 2 (September 2002)*

**Case ID No.** 36400

*PCW Revision June 12, 2008*

**Reg. Ent. Reference No.** RN101546588

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Steven Lopez

## 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 | 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% |

| | | *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)*** 0%

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

No

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

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

High Performer

***Adjustment Percentage (Subtotal 7)*** -10%

>> **Compliance History Summary**

**Compliance History Notes**

Reduction due to high performer classification.

***Total Adjustment Percentage (Subtotals 2, 3, & 7)*** -10%

**Screening Date** 14-Aug-2008 **Docket No.** 2008-1344-PST-E **PCW**

**Respondent** G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3 *Policy Revision 2 (September 2002)*

**Case ID No.** 36400 *PCW Revision June 12, 2008*

**Reg. Ent. Reference No.** RN101546588

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Steven Lopez

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 115.248(1) and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

| OR | Release | Harm: Major | Moderate | Minor |
|---|---|---|---|---|
| | Actual | | | |
| | Potential | | x | |

**Percent** 10%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 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** $9,000

$1,000

## Violation Events

Number of Violation Events 1 — 20 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $1,000

One quarterly event is recommended based on documentation of the violation during the July 25, 2008 investigation to the August 14, 2008 screening date.

## Good Faith Efforts to Comply

10.0% Reduction — $100

| | Before NOV | NOV to EDPRP/Settlement Offer |
|---|---|---|
| Extraordinary | | |
| Ordinary | | x |
| N/A | | (mark with x) |

Notes: The Respondent came into compliance on August 20, 2008 after the NOE dated August 8, 2008.

**Violation Subtotal** $900

## Economic Benefit (EB) for this violation — Statutory Limit Test

**Estimated EB Amount** $2 **Violation Final Penalty Total** $1,044

**This violation Final Assessed Penalty (adjusted for limits)** $1,044

# Economic Benefit Worksheet

**Respondent** G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3
**Case ID No.** 36400
**Reg. Ent. Reference No.** RN101546588
**Media** 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 | | | | 0.00 | $0 | $0 | $0 |
| Buildings | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Engineering/construction | | | | 0.00 | $0 | $0 | $0 |
| Land | | | | 0.00 | $0 | n/a | $0 |
| Record Keeping System | | | | 0.00 | $0 | n/a | $0 |
| Training/Sampling | $500 | 25-Jul-2008 | 20-Aug-2008 | 0.07 | $2 | n/a | $2 |
| Remediation/Disposal | | | | 0.00 | $0 | n/a | $0 |
| Permit Costs | | | | 0.00 | $0 | n/a | $0 |
| Other (as needed) | | | | 0.00 | $0 | n/a | $0 |

Notes for DELAYED costs: Estimated cost of training a Station representative and employees in Stage II procedures. The Date Required is the investigation date. The Final Date is the compliance date.

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

| Avoided Costs | | | | | | | |
|---|---|---|---|---|---|---|---|
| Disposal | | | | 0.00 | $0 | $0 | $0 |
| Personnel | | | | 0.00 | $0 | $0 | $0 |
| Inspection/Reporting/Sampling | | | | 0.00 | $0 | $0 | $0 |
| Supplies/equipment | | | | 0.00 | $0 | $0 | $0 |
| Financial Assurance [2] | | | | 0.00 | $0 | $0 | $0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |

Notes for AVOIDED costs:

Approx. Cost of Compliance: $500

TOTAL: $2

**Screening Date** 14-Aug-2008 **Docket No.** 2008-1344-PST-E **PCW**

**Respondent** G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3 *Policy Revision 2 (September 2002)*

**Case ID No.** 36400 *PCW Revision June 12, 2008*

**Reg. Ent. Reference No.** RN101546588

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Steven Lopez

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual testing had not been conducted.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | x | | |

**Percent** 25%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 0%

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

**Adjustment** $7,500

$2,500

## Violation Events

Number of Violation Events 1 365 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | x |
| single event | |

**Violation Base Penalty** $2,500

One annual event is recommended for the one-year period preceding the July 25, 2008 investigation.

## Good Faith Efforts to Comply

10.0% Reduction $250

| | Before NOV | NOV to EDPRP/Settlement Offer |
|---|---|---|
| Extraordinary | | |
| Ordinary | | x |
| N/A | | (mark with x) |

Notes: The Respondent came into compliance on August 21, 2008 after the NOE dated August 8, 2008.

**Violation Subtotal** $2,250

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $1,100

## Statutory Limit Test

**Violation Final Penalty Total** $2,611

**This violation Final Assessed Penalty (adjusted for limits)** $2,611

# Economic Benefit Worksheet

**Respondent** G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3
**Case ID No.** 36400
**Reg. Ent. Reference No.** RN101546588
**Media** Petroleum Storage Tank
**Violation No.** 2

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

| Item Description (No commas or $) | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **Delayed Costs** | | | | | | | |
| Equipment | | | | 0.00 | $0 | $0 | $0 |
| Buildings | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Engineering/construction | | | | 0.00 | $0 | $0 | $0 |
| Land | | | | 0.00 | $0 | n/a | $0 |
| Record Keeping System | | | | 0.00 | $0 | n/a | $0 |
| Training/Sampling | | | | 0.00 | $0 | n/a | $0 |
| Remediation/Disposal | | | | 0.00 | $0 | n/a | $0 |
| Permit Costs | | | | 0.00 | $0 | n/a | $0 |
| Other (as needed) | | | | 0.00 | $0 | n/a | $0 |
| Notes for DELAYED costs | | | | | | | |
| **Avoided Costs** | ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | | | | | | |
| Disposal | | | | 0.00 | $0 | $0 | $0 |
| Personnel | | | | 0.00 | $0 | $0 | $0 |
| Inspection/Reporting/Sampling | | | | 0.00 | $0 | $0 | $0 |
| Supplies/equipment | | | | 0.00 | $0 | $0 | $0 |
| Financial Assurance [2] | | | | 0.00 | $0 | $0 | $0 |
| ONE-TIME avoided costs [3] | $1,000 | 25-Jul-2007 | 21-Aug-2008 | 1.99 | $100 | $1,000 | $1,100 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Notes for AVOIDED costs | Avoided cost for annual testing of the Stage II equipment. The Date Required is one year prior to the investigation date. The Final Date is the compliance date. | | | | | | |

Approx. Cost of Compliance: $1,000

TOTAL: $1,100

**Screening Date** 14-Aug-2008 **Docket No.** 2008-1344-PST-E **PCW**

**Respondent** G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3 *Policy Revision 2 (September 2002)*

**Case ID No.** 36400 *PCW Revision June 12, 2008*

**Reg. Ent. Reference No.** RN101546588

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Steven Lopez

**Violation Number** 3

**Rule Cite(s)** 30 Tex. Admin. Code § 115.242(1)(C), (3)(A), and (9) 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. Failed to maintain the Stage II equipment in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order and free of defects that would impair the effectiveness of the system. Specifically, the swivel adapters were not installed on the dry break or the fill ports. Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with Stage II equipment.

**Base Penalty** $10,000

## >> Environmental, Property and Human Health Matrix

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | | x | |

OR

**Percent** 10%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 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** $9,000

$1,000

## Violation Events

Number of Violation Events 1 — 20 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| monthly | |
| quarterly | x |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $1,000

One quarterly event is recommended based on documentation of the violation during the July 25, 2008 investigation to the August 14, 2008 screening date.

## Good Faith Efforts to Comply

10.0% Reduction $100

| | Before NOV | NOV to EDPRP/Settlement Offer |
|---|---|---|
| Extraordinary | | |
| Ordinary | | x |
| N/A | | (mark with x) |

Notes: The Respondent came into compliance on August 21, 2008 after the NOE dated August 8, 2008.

**Violation Subtotal** $900

## Economic Benefit (EB) for this violation — Statutory Limit Test

**Estimated EB Amount** $9 **Violation Final Penalty Total** $1,044

**This violation Final Assessed Penalty (adjusted for limits)** $1,044

# Economic Benefit Worksheet

**Respondent** G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3
**Case ID No.** 36400
**Reg. Ent. Reference No.** RN101546588
**Media** Petroleum Storage Tank
**Violation No.** 3

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

| Item Description (No commas or $) | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **Delayed Costs** | | | | | | | |
| Equipment | $2,500 | 25-Jul-2008 | 10-Aug-2008 | 0.04 | $0 | $7 | $8 |
| Buildings | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | $150 | 25-Jul-2008 | 21-Aug-2008 | 0.07 | $0 | $1 | $1 |
| Engineering/construction | | | | 0.00 | $0 | $0 | $0 |
| Land | | | | 0.00 | $0 | n/a | $0 |
| Record Keeping System | | | | 0.00 | $0 | n/a | $0 |
| Training/Sampling | | | | 0.00 | $0 | n/a | $0 |
| Remediation/Disposal | | | | 0.00 | $0 | n/a | $0 |
| Permit Costs | | | | 0.00 | $0 | n/a | $0 |
| Other (as needed) | $50 | 25-Jul-2008 | 21-Aug-2008 | 0.07 | $0 | n/a | $0 |

**Notes for DELAYED costs**: Estimated cost to upgrade the Stage II equipment to ORVR compatible systems ($2,500). The Date Required is the date of investigation. The Final Date is the date of compliance. Estimated cost to install swivel adapters ($150). The Date Required is the investigation date. The Final Date is the date of compliance. Estimated cost to post operating instructions on each dispensing pump ($50). The Date Required is the investigation date. The Final Date is the date of compliance.

| **Avoided Costs** | ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | | | | | | |
|---|---|---|---|---|---|---|---|
| Disposal | | | | 0.00 | $0 | $0 | $0 |
| Personnel | | | | 0.00 | $0 | $0 | $0 |
| Inspection/Reporting/Sampling | | | | 0.00 | $0 | $0 | $0 |
| Supplies/equipment | | | | 0.00 | $0 | $0 | $0 |
| Financial Assurance [2] | | | | 0.00 | $0 | $0 | $0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |

**Notes for AVOIDED costs**:

**Approx. Cost of Compliance** $2,700

**TOTAL** $9

# Compliance History

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN603392630 | G & J INTERNATIONAL, INC. | Classification: HIGH | Rating: 0.00 |
| Regulated Entity: | RN101546588 | Sunny's Food Mart 3 | Classification: HIGH | Site Rating: 0.00 |
| ID Number(s): | PETROLEUM STORAGE TANK REGISTRATION | REGISTRATION | 960 | |
| Location: | 2997 N STEMMONS FWY, LEWISVILLE, TX, 75077 | Rating Date: September 01 07 | Repeat Violator: NO | |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | | |
| Date Compliance History Prepared: | August 14, 2008 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | August 14, 2003 to August 14, 2008 | | | |

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

Name: Steven Lopez Phone: 512-239-1896

### 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 08/08/2008 (688525)

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

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** |
| **G & J INTERNATIONAL, INC. DBA** | § | |
| **SUNNY'S FOOD MART 3** | § | |
| **RN101546588** | § | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2008-1344-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 G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3 ("the Respondent") 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 the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 2997 North Stemmons Freeway in Lewisville, Denton 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 the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 13, 2008.

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

6. An administrative penalty in the amount of Four Thousand Seven Hundred Dollars ($4,700) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Sixty Dollars ($160) of the administrative penalty and Nine Hundred Forty Dollars ($940) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

   The remaining amount of Three Thousand Six Hundred Dollars ($3,600) of the administrative penalty shall be payable in 18 monthly payments of Two Hundred Dollars ($200) 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 the Respondent 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 the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent 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 the Respondent 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 the Respondent implemented the following corrective measures at the Station:

   a. Completed certified Stage II representative training and all current employees received in-house Stage II vapor recovery training on August 20, 2008;

   b. Tested the Stage II vapor recovery system on August 21, 2008, with passing results;

   c. Upgraded the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems on August 10, 2008;

   d. Installed swivel adapters on the dry break and the fill ports on August 21, 2008; and

   e. Posted operating instruction on the front of each gasoline dispensing pump equipped with Stage II equipment on August 21, 2008.

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 the Respondent 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 owner and operator of the Station, the Respondent is alleged to have:

1. Failed to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment, in violation of 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 25, 2008.

2. Failed to verify proper operation of the Stage II equipment at least once every 12 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 25, 2008. Specifically, the Stage II annual testing had not been conducted.

3. Failed to upgrade the Stage II equipment to 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 25, 2008.

4. Failed to maintain the Stage II equipment in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order and free of defects that would impair the effectiveness of the system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 25, 2008. Specifically, the swivel adapters were not installed on the dry break or the fill ports.

5. Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with Stage II equipment, in violation of 30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on July 25, 2008.

## III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from 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: G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3, Docket No. 2008-1344-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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.

3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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

6. 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.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

Date 1/23/2009

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.

Signature

Date 11/25/08

KARIM JUMA

Name (Printed or typed)
Authorized Representative of
G & J INTERNATIONAL, INC. dba Sunny's Food Mart 3

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.