

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-1944-PST-E **TCEQ ID:** RN101787802 **CASE NO.:** 36911  
**RESPONDENT NAME:** SUNESARA INVESTMENT INC. dba Baytown Market 2

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Baytown Market 2, 1617 Missouri Street, Baytown, Harris County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 13, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Steven Lopez, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-1896; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Amirali Sunesara, President, SUNESARA INVESTMENT INC., 9701 Jensen Drive, Houston, Texas 77093-6301  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> September 2, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> November 25, 2008 (NOE)</p> <p><b>Background Facts:</b> This was an enforcement follow-up investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to maintain Stage II records at the Station. Specifically, the Respondent did not maintain the Stage II test results and the daily inspection log [30 TEX. ADMIN. CODE § 115.246(5) and (6) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) 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 &amp; SAFETY CODE § 382.085(b)].</p> <p>3) Failure to maintain the Stage II vapor recovery system 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, including but not limited to absence or disconnection of any component that is part of the approved system. Specifically, the dry break poppet valve was not functioning [30 TEX. ADMIN. CODE § 115.242(3)(J) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>4) Failure to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the</p>	<p><b>Total Assessed:</b> \$6,146</p> <p><b>Total Deferred:</b> \$1,229  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$517 (remaining \$4,400 due in 11 monthly payments of \$400 each)</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order:</p> <p>i) Begin maintaining all Stage II records;</p> <p>ii) Upgrade the Stage II equipment to ORVR compatible systems, conduct successful Stage II vapor recovery tests after completing the ORVR upgrade, and begin maintaining the Stage I vapor recovery system in proper operating condition, including, but not limited to, replacing the dry break poppet valve; and</p> <p>iii) Conduct the required annual and triennial testing of the Stage II equipment.</p> <p>b) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.i. through a.iii.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

## TCEQ

<b>DATES</b>	<b>Assigned PCW</b>	28-Nov-2008	<b>Screening</b>	28-Nov-2008	<b>EPA Due</b>	
		23-Dec-2008				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	SUNESARA INVESTMENT INC. dba Baytown Market 2		
<b>Reg. Ent. Ref. No.</b>	RN101787802		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	36911	<b>No. of Violations</b>	3
<b>Docket No.</b>	2008-1944-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Steven Lopez
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

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

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   **Subtotal 4**

**Notes**

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  **Subtotal 6**

Total EB Amounts  \*Capped at the Total EB \$ Amount  
Approx. Cost of Compliance

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

**Screening Date** 28-Nov-2008

**Docket No.** 2008-1944-PST-E

**PCW**

**Respondent** SUNESARA INVESTMENT INC. dba Baytown Market 2

Policy Revision 2 (September 2002)

**Case ID No.** 36911

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101787802

**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)	2	10%
	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)** 10%

>> **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 two previous NOVs with same or similar violations.

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

<b>Screening Date</b> 28-Nov-2008	<b>Docket No.</b> 2008-1944-PST-E	<b>PCW</b>		
<b>Respondent</b> SUNESARA INVESTMENT INC. dba Baytown Market 2	<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 36911	<small>PCW Revision October 30, 2008</small>			
<b>Reg. Ent. Reference No.</b> RN101787802				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Steven Lopez				
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 115.246(5) and (6) and Tex. Health & Safety Code § 382.085(b)			
<b>Violation Description</b>	Failed to maintain Stage II records at the Station. Specifically, the Respondent did not maintain the Stage II test results and the daily inspection log.			
<b>Base Penalty</b>		\$10,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<b>Percent</b>	0%	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	x	<input type="checkbox"/>	<input type="checkbox"/>
		<b>Percent</b>	10%	
<b>Matrix Notes</b>	100% of the rule requirement was not met.			
<b>Adjustment</b>		\$9,000		
		\$1,000		
<b>Violation Events</b>				
<b>Number of Violation Events</b>		1	88	
		<b>Number of violation days</b>		
<small>mark only one with an x.</small>	daily	<input type="checkbox"/>	<b>Violation Base Penalty</b>	
	weekly	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	x		
<b>Violation Base Penalty</b>		\$1,000		
One single event is recommended based on the documentation of the violation during the September 2, 2008 investigation.				
<b>Good Faith Efforts to Comply</b>				
		0.0%	<b>Reduction</b>	
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>		
N/A	x	(mark with x)		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
<b>Violation Subtotal</b>		\$1,000		
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		\$25	<b>Violation Final Penalty Total</b>	
		\$1,366		
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>		
		\$1,366		

### Economic Benefit Worksheet

**Respondent:** SUNESARA INVESTMENT INC: dba Baytown Market 2  
**Case ID No.** 36911  
**Reg. Ent. Reference No.** RN101787802  
**Media:** Petroleum Storage Tank  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

Equipment				0.00	\$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	\$500	2-Sep-2008	28-Aug-2009	0.99	\$25	n/a	\$25
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:** Estimated cost to maintain Stage II records at the Station. The Date Required is the date of investigation. The Final Date is the estimated date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$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:**

<b>Approx. Cost of Compliance</b>	\$500	<b>TOTAL</b>	\$25
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<b>Screening Date</b> 28-Nov-2008	<b>Docket No.</b> 2008-1944-PST-E	<b>PCW</b>			
<b>Respondent</b> SUNESARA INVESTMENT INC. dba Baytown Market 2	<small>Policy Revision 2 (September 2002)</small>				
<b>Case ID No.</b> 36911	<small>PCW Revision October 30, 2008</small>				
<b>Reg. Ent. Reference No.</b> RN101787802					
<b>Media [Statute]</b> Petroleum Storage Tank					
<b>Enf. Coordinator</b> Steven Lopez					
<b>Violation Number</b>	2				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 115.242(1)(C) and (3)(J) and Tex. Health & Safety Code § 382.085(b)				
<b>Violation Description</b>	Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems. Also, failed to maintain the Stage II vapor recovery system 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, including but not limited to absence or disconnection of any component that is part of the approved system. Specifically, the dry break poppet valve was not functioning.				
<b>Base Penalty</b>		\$10,000			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	<b>Release</b>	<b>Harm</b>			Percent
		Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	10%
	Potential	<input type="checkbox"/>	x	<input type="checkbox"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	Percent
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	0%
<b>Matrix Notes</b>	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.				
<b>Adjustment</b>					\$9,000
					\$1,000
<b>Violation Events</b>					
Number of Violation Events		1	Number of violation days		88
<small>mark only one with an x</small>	daily	<input type="checkbox"/>	Violation Base Penalty		
	weekly	<input type="checkbox"/>			
	monthly	<input type="checkbox"/>			
	quarterly	x			
	semiannual	<input type="checkbox"/>			
	annual	<input type="checkbox"/>			
single event	<input type="checkbox"/>	\$1,000			
One quarterly event is recommended from the investigation date of September 2, 2008 to the screening date of November 28, 2008.					
<b>Good Faith Efforts to Comply</b>		0.0% Reduction		\$0	
		<small>Before NOV    NOV to EDPRP/Settlement Offer</small>			
Extraordinary	<input type="checkbox"/>	(mark with x)			
Ordinary	<input type="checkbox"/>				
N/A	x				
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.				
<b>Violation Subtotal</b>					\$1,000
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>		
Estimated EB Amount		\$180	Violation Final Penalty Total		\$1,366
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					\$1,366

## Economic Benefit Worksheet

**Respondent:** SUNESARA INVESTMENT INC. dba Baytown Market 2  
**Case ID No.:** 36911  
**Reg. Ent. Reference No.:** RN101787802  
**Media:** Petroleum Storage Tank  
**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

Equipment	\$2,600	2-Sep-2008	28-Aug-2009	0.99	\$9	\$171	\$180
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**  
 Estimated cost to upgrade the Stage II equipment to ORVR compatible systems (\$2,500) and to repair or replace the dry break poppet valve (\$100). The Date Required is the investigation date. The Final Date is the estimated date of compliance.

**Avoided Costs**

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

Disposal				0.00	\$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 \$2,600

**TOTAL** \$180

<b>Screening Date</b> 28-Nov-2008	<b>Docket No.</b> 2008-1944-PST-E	<b>PCW</b>		
<b>Respondent</b> SUNESARA INVESTMENT INC. dba Baytown Market 2	<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 36911	<small>PCW Revision October 30, 2008</small>			
<b>Reg. Ent. Reference No.</b> RN101787802				
<b>Media [Statute]</b> Petroleum Storage Tank				
<b>Enf. Coordinator</b> Steven Lopez				
<b>Violation Number</b> <input type="text" value="3"/>				
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 115.245(2) and Tex. Health &amp; Safety Code § 382.085(b)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual and triennial compliance testing had not been conducted."/>			
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<b>Percent</b>	<input type="text" value="25%"/>	
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>	<input type="text" value="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."/>			
<b>Adjustment</b>		<input type="text" value="\$7,500"/>		
				<input type="text" value="\$2,500"/>
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	<input type="text" value="1"/>	<input type="text" value="1095"/>	<b>Number of violation days</b>
<small>mark only one with an x</small>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
		<b>Violation Base Penalty</b>	<input type="text" value="\$2,500"/>	
<input type="text" value="One single event is recommended for the three-year period preceding the September 2, 2008 investigation."/>				
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> Reduction		<input type="text" value="\$0"/>
		<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>	
N/A	<input checked="" type="checkbox"/>	<input type="text" value="(mark with x)"/>		
<b>Notes</b>	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
		<b>Violation Subtotal</b>	<input type="text" value="\$2,500"/>	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
	<b>Estimated EB Amount</b>	<input type="text" value="\$1,196"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$3,414"/>
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$3,414"/>

### Economic Benefit Worksheet

**Respondent** SUNESARA INVESTMENT INC. dba Baytown Market 2  
**Case ID No.** 36911  
**Reg. Ent. Reference No.** RN101787802  
**Media** Petroleum Storage Tank  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	2-Sep-2005	2-Sep-2008	3.92	\$196	\$1,000	\$1,196
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for annual and triennial testing of the Stage II equipment. The Date Required is three years prior to the investigation date. The Final Date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,196

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600743942	SUNESARA INVESTMENT INC.	Classification: AVERAGE	Rating: 3.45
Regulated Entity:	RN101787802	Baytown Market 2	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	71455
Location:	1617 MISSOURI ST, BAYTOWN, TX, 77520			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	December 03, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 03, 2003 to December 03, 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?    | Yes                             |
| 3. If Yes, who is the current owner?   | <u>SUNESARA INVESTMENT INC.</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>Texas Transeastern, Inc.</u> |
| 5. When did the change(s) in ownership occur?  | <u>03/09/2004</u>               |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO   |                                 |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 03/11/2008 | (618180) |
| 2 | 08/13/2008 | (687798) |
| 3 | 11/25/2008 | (704327) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |          |                 |          |
|--------------|---|----------|-----------------|----------|
| Date:        | 03/11/2008  | (618180) |                 |          |
| Self Report? | NO  |          | Classification: | Minor    |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(6)   |          |                 |          |
| Description: | Failure to maintain a daily inspection log according to 115.244 (Inspection Requirements).  |          |                 |          |
| Self Report? | NO  |          | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.242(1)(C)  |          |                 |          |
| Description: | Failure to install a compatible onboard refueling vapor recovery (ORVR) Stage II vapor recovery system as defined in §115.240 of this title in accordance with the schedules in §115.249 of this title. |          |                 |          |
| Self Report? | NO  |          | Classification: | Minor    |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.246(5)   |          |                 |          |
| Description: | Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).   |          |                 |          |
| Self Report? | NO  |          | Classification: | Moderate |
| Citation:    | 30 TAC Chapter 115, SubChapter C 115.242(3)   |          |                 |          |
| Description: | Failure to maintain all components of the Stage II Vapor Recovery system in   |          |                 |          |

proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system.

Date: 08/13/2008 (687798)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)  
Description: Failure to maintain a daily inspection log according to 115.244 (Inspection Requirements).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)  
Description: Failure to install a compatible onboard refueling vapor recovery (ORVR) Stage II vapor recovery system as defined in §115.240 of this title in accordance with the schedules in §115.249 of this title.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)  
Description: Failure to maintain a record of the results of testing conducted at the facility according to 115.245 (Testing Requirements).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)  
Description: Failure to maintain all components of the Stage II Vapor Recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the 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  
SUNESARA INVESTMENT INC. DBA  
BAYTOWN MARKET 2  
RN101787802

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2008-1944-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 SUNESARA INVESTMENT INC. dba Baytown Market 2 ("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 1617 Missouri Street in Baytown, Harris 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 November 30, 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 Six Thousand One Hundred Forty-Six Dollars (\$6,146) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Hundred Seventeen Dollars (\$517) of the administrative penalty and One Thousand Two Hundred Twenty-Nine Dollars (\$1,229) 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 Four Thousand Four Hundred Dollars (\$4,400) of the administrative penalty shall be payable in 11 monthly payments of Four Hundred Dollars (\$400) 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 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.
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, the Respondent is alleged to have:

1. Failed to maintain Stage II records at the Station, in violation of 30 TEX. ADMIN. CODE § 115.246(5) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 2, 2008. Specifically, the Respondent did not maintain the Stage II test results and the daily inspection log.

2. 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 September 2, 2008.
3. Failed to maintain the Stage II vapor recovery system 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, including but not limited to absence or disconnection of any component that is part of the approved system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(J) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on September 2, 2008. Specifically, the dry break poppet valve was not functioning.
4. Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first, 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 September 2, 2008. Specifically, the Stage II annual and triennial compliance testing had not been conducted.

### 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: SUNESARA INVESTMENT INC. dba Baytown Market 2, Docket No. 2008-1944-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 the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Begin maintaining all Stage II records, in accordance with 30 TEX. ADMIN. CODE § 115.246;

- ii. Upgrade the Stage II equipment to ORVR compatible systems, conduct successful Stage II vapor recovery tests after completing the ORVR upgrade and begin maintaining the Stage I vapor recovery system in proper operating condition, including, but not limited to, replacing the dry break poppet valve, in accordance with 30 TEX. ADMIN. CODE § 115.242; and
  - iii. Conduct the required annual and triennial testing of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245.
- 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 Nos. 2.a.i. through 2.a.iii. 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  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

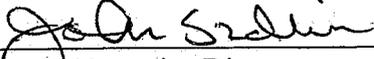
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any 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.

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 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.
6. 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.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. 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

3/24/2009  
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 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

2-6-09  
Date

Amirali R. Sunesara  
Name (Printed or typed)  
Authorized Representative of  
SUNESARA INVESTMENT INC. dba Baytown Market 2

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.