

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0752-PST-E TCEQ ID: RN101943140 CASE NO.: 35864
RESPONDENT NAME: ADNAN NAJM DBA SUNMART 352

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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: 3300 Yellowstone Boulevard, Houston, Harris 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 no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 20, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Barham A. Richard Litigation Division, MC 175, (512) 239-0107 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Ms. Judy Kluge, Waste Enforcement Section, MC R-4, (817) 588-5825 TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623 Respondent: Mr. Adnan Najm, Owner, Sunmart 352, 3300 Yellowstone Boulevard, Houston, Texas 77021 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:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 17, 2008</p> <p>Date of NOE Relating to this Case: April 22, 2008</p> <p>Background Facts: The EDPRP was filed on October 27, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on October 29, 2008, as evidenced by the signature on the card. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent no longer owns or operates the Station.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel [30 TEX. ADMIN. CODE § 115.246(1), (3), and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 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 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to conduct daily and monthly inspections of the Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.244(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 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 operation of the vapor recovery system [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 	<p>Total Assessed: \$22,708</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$22,708</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that as of May 30, 2008, the Respondent no longer owns or operates the Station.</p>

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>5. Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems; and 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 a part of the approved system [30 TEX. ADMIN. CODE § 115.242(1)(C) and (3)(K) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>6. Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to provide release detection for the piping associated with the USTs; failed to test the line leak detectors at least once per year for performance and operational reliability; failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii), (d)(1)(B)(iii)(I) and TEX. HEALTH & SAFETY CODE § 26.3475(a) and (c)(1)].</p> <p>7. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date [30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</p> <p>8. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</p> <p>9. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>10. Failed to maintain the required UST records and make them immediately available for the inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].</p> <p>11. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day [30 TEX. ADMIN. CODE § 334.48(c)].</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>12. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].</p>		



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision April 29, 2008

DATES	Assigned	28-Apr-2008	Screening	5-May-2008	EPA Due	
	PCW	29-Jul-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Adnan Najm dba Sunmart 352
Reg. Ent. Ref. No.	RN101943140
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35864	No. of Violations	12
Docket No.	2008-0752-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Judy Kluge
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$18,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment due to compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0.0% Reduction	Subtotal 5	\$0
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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.

Total EB Amounts	\$4,953	0.0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$11,100	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$18,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	26.2%	Adjustment	\$4,708
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation Nos. 2, 3, 6, and 9.

Final Penalty Amount \$22,708

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$22,708
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$22,708
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Screening Date 5-May-2008

Docket No. 2008-0752-PST-E

PCW

Respondent Adnan Najm dba Sunmart 352

Policy Revision 2 (September 2002)

Case ID No. 35864

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101943140

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

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%
<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) 0%

>> **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

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 5-May-2008	Docket No. 2008-0752-PST-E	PCW			
Respondent Adnan Najm dba Sunmart 352	<i>Policy Revision 2 (September 2002)</i>				
Case ID No. 35864	<i>PCW Revision April 29, 2008</i>				
Reg. Ent. Reference No. RN101943140					
Media [Statute] Petroleum Storage Tank					
Enf. Coordinator Judy Kluge					
Violation Number <input type="text" value="1"/>					
Rule Cite(s)	30 Tex. Admin. Code § 115.246(1), (3), and (7)(A) and Tex. Health & Safety Code § 382.085(b)				
Violation Description	Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, records not available for review included a copy of the applicable California Air Resources Board Executive Order and Stage II maintenance records.				
Base Penalty		<input type="text" value="\$10,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
		Percent	<input type="text" value="0%"/>		
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>		
Matrix Notes	100% of the rule requirement was not met.				
		Adjustment	<input type="text" value="\$9,000"/>		
					<input type="text" value="\$1,000"/>
Violation Events					
Number of Violation Events		<input type="text" value="1"/>		Number of violation days	
				<input type="text" value="18"/>	
<i>mark only one with an x</i>	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	<input type="text" value="\$1,000"/>		
One single event is recommended based on documentation of the violation during the April 17, 2008 investigation.					
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		<input type="text" value="\$16"/>		Violation Final Penalty Total	
				<input type="text" value="\$1,262"/>	
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$1,262"/>	

Economic Benefit Worksheet

Respondent Adnan Najm dba Sunmart 352

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

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
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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	17-Apr-2008	8-Dec-2008	0.64	\$16	n/a	\$16
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 establish and maintain Stage II records. The date required is the investigation date and the final date is the expected 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

\$500

TOTAL

\$16

Screening Date 5-May-2008	Docket No. 2008-0752-PST-E	PCW
Respondent Adnan Najm dba Sunmart 352	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35864	<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN101943140		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)"/>	
Violation Description	<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 manifold 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 system compliance testing had not been conducted."/>	
Base Penalty	<input type="text" value="\$10,000"/>	

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="25%"/>	

>> Programmatic Matrix

	Falsification				
		Major	Moderate		Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>		<input type="text"/>
				Percent <input type="text" value="0%"/>	
Matrix Notes	<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."/>				
				Adjustment <input type="text" value="\$7,500"/>	

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One single event is recommended for the three-year period preceding the April 17, 2008 investigation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1,196"/>	Violation Final Penalty Total <input type="text" value="\$3,154"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,154"/>	

Economic Benefit Worksheet

Respondent Adnan Najm dba Sunmart 352

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

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
<small>No commas or \$</small>							

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
Annual/Triennial Testing	\$1,000	17-Apr-2005	17-Apr-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 and the final date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,196

PCW

Screening Date 5-May-2008

Docket No. 2008-0752-PST-E

Policy Revision 2 (September 2002)

Respondent Adnan Najm dba Sunmart 352

PCW Revision April 29, 2008

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 115.244(1) and (3) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to conduct daily and monthly inspections of the Stage II vapor recovery system.

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 based on documentation of the violation during the April 17, 2008 investigation to the May 5, 2008 screening date.

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 Adnan Najm dba Sunmart 352

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

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
<small>No commas or \$</small>							

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]				0.00	\$0	\$0	\$0
Other (as needed)	\$350	17-Mar-2008	17-Apr-2008	1.00	\$18	\$350	\$368

Notes for AVOIDED costs

Estimated expense for an employee to conduct daily and monthly inspections of the Stage II system. The date required is one month prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$350

TOTAL

\$368

Screening Date 5-May-2008	Docket No. 2008-0752-PST-E	PCW
Respondent Adnan Najm dba Sunmart 352	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35864	<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN101943140		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number <input type="text" value="4"/>		
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 115.248(1) and Tex. Health & Safety Code § 382.085(b)"/>	
Violation Description	<input type="text" value="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 operation of the vapor recovery system."/>	
Base Penalty	<input type="text" value="\$10,000"/>	

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

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 Adnan Najm dba Sunmart 352

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

Media Petroleum Storage Tank

Violation No. 4

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				0.00	\$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	17-Apr-2008	8-Dec-2008	0.64	\$16	n/a	\$16
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 Stage II Station representative and conducting in-house stage II training for the employees. The date required is the investigation date and the final date is the expected 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

\$500

TOTAL

\$16

Screening Date 5-May-2008	Docket No. 2008-0752-PST-E	PCW
Respondent Adnan Najm dba Sunmart 352	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35864	<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN101943140		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number	5	
Rule Cite(s)	30 Tex. Admin. Code § 115.242(1)(C) and (3)(K) 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 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 a part of the approved system. Specifically, the automatic tank gauge monitoring system printer was malfunctioning and not allowing any readings to be obtained.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix					
OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	x	<input type="text"/>	Percent <input type="text" value="10%"/>
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <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 <input type="text" value="\$9,000"/>					

Violation Events				
	Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="18"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	x		Violation Base Penalty <input type="text" value="\$1,000"/>
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
One quarterly event is recommended based on documentation from the date of the investigation, April 17, 2008, to the May 5, 2008 screening date.				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$138"/>	Violation Final Penalty Total <input type="text" value="\$1,262"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,262"/>	

Economic Benefit Worksheet

Respondent Adnan Najm dba Sunmart 352

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

Media Petroleum Storage Tank

Violation No. 5

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	\$3,500	17-May-2008	8-Dec-2008	0.56	\$7	\$131	\$138
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, and repair the automatic tank gauge monitoring system printer. The date required is the investigation date and the final date is the expected compliance date.

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

\$3,500

TOTAL

\$138

Screening Date 5-May-2008

Docket No. 2008-0752-PST-E

PCW

Respondent Adnan Najm dba Sunmart 352

Policy Revision 2 (September 2002)

Case ID No. 35864

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101943140

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii), (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not functioning. Failed to provide release detection for the piping associated with the USTs. Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> 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 Number of violation days 18

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the April 17, 2008 investigation to the May 5, 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,144

Violation Final Penalty Total \$3,154

This violation Final Assessed Penalty (adjusted for limits) \$3,154

Economic Benefit Worksheet

Respondent Adnan Najm dba Sunmart 352

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

Media Petroleum Storage Tank

Violation No. 6

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				0.00	\$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)	\$1,500	17-Apr-2008	8-Dec-2008	0.64	\$48	n/a	\$48

Notes for DELAYED costs

The estimated cost of monitoring all USTs for releases including reconciliation of inventory control records. The date required is the investigation date and the final date is expected 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]	\$1,000	17-Apr-2007	17-Apr-2008	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided costs for conducting annual piping tightness test and line leak detector test. The date required is one year prior to the investigation date and the final date is the investigation date.

Approx. Cost of Compliance

\$2,500

TOTAL

\$1,144

Screening Date 5-May-2008

Docket No. 2008-0752-PST-E

PCW

Respondent Adnan Najm dba Sunmart 352

Policy Revision 2 (September 2002)

Case ID No. 35864

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101943140

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

Rule Cite(s)

Violation Description

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 type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Percent

Matrix Notes

Adjustment

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="checkbox"/>

Violation Base Penalty

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 Adnan Najm dba Sunmart 352

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

Media Petroleum Storage Tank

Violation No. 7

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				0.00	\$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	\$100	1-May-2007	8-Nov-2008	1.53	\$8	n/a	\$8
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to timely renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is 30 days before the expiration date of the delivery certificate and the final date is the expected 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

\$100

TOTAL

\$8

Screening Date 5-May-2008

Docket No. 2008-0752-PST-E

PCW

Respondent Adnan Najm dba Sunmart 352

Policy Revision 2 (September 2002)

Case ID No. 35864

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101943140

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 8

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Station received one delivery of fuel without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5%
	Potential			X	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

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

Adjustment \$9,500

\$500

Violation Events

1

1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$500

One single event is recommended for acceptance of one delivery of fuel.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$631

This violation Final Assessed Penalty (adjusted for limits) \$631

Economic Benefit Worksheet

Respondent Adnan Najm dba Sunmart 352

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

Media Petroleum Storage Tank

Violation No. 8

Percent Interest	Years of Depreciation
5.0	15

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

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

Economic Benefit is included in Violation No. 7.

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

\$0

TOTAL

\$0

Screening Date 5-May-2008	Docket No. 2008-0752-PST-E	PCW
Respondent Adnan Najm dba Sunmart 352	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35864	<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN101943140		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Judy Kluge		
Violation Number <input type="text" value="9"/>		
Rule Cite(s)	30 Tex. Admin. Code § 37.815(a) and (b)	
Violation Description	Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	

>> Programmatic Matrix

	Falsification				
		Major	Moderate		Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>		<input type="text"/>
				Percent <input type="text" value="10%"/>	
Matrix Notes	100% of the rule requirement was not met.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	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="checkbox"/>

Violation Base Penalty

Three single events are recommended for the three USTs at the Station.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$2,048"/>	Violation Final Penalty Total <input type="text" value="\$3,785"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,785"/>	

Economic Benefit Worksheet

Respondent Adnan Najm dba Sunmart 352
Case ID No. 35864
Reg. Ent. Reference No. RN101943140
Media Petroleum Storage Tank
Violation No. 9

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				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]	\$1,950	17-Apr-2007	17-Apr-2008	1.00	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for three petroleum USTs (at \$650 per tank) for the twelve month period preceding the date of the investigation.

Approx. Cost of Compliance

\$1,950

TOTAL

\$2,048

Screening Date 5-May-2008

Docket No. 2008-0752-PST-E

PCW

Respondent Adnan Najm dba Sunmart 352

Policy Revision 2 (September 2002)

Case ID No. 35864

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101943140

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number

Rule Cite(s)

Violation Description Failed to maintain the required UST records and make them immediately available for the inspection upon request by agency personnel.

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="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

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

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 based on documentation of the violation during the April 17, 2008 investigation.

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 Adnan Najm dba Sunmart 352
Case ID No. 35864
Reg. Ent. Reference No. RN101943140
Media Petroleum Storage Tank
Violation No. 10

Percent Interest	Years of Depreciation
5.0	15

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

Item Description No commas or \$

Delayed Costs

Equipment			0.00	\$0	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0	\$0
Record Keeping System	\$100	17-Apr-2008	0.56	\$3	n/a	\$3	\$3
Training/Sampling			0.00	\$0	n/a	\$0	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0	\$0
Permit Costs			0.00	\$0	n/a	\$0	\$0
Other (as needed)			0.00	\$0	n/a	\$0	\$0

Notes for DELAYED costs Estimated cost to maintain all UST records. The date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$100 **TOTAL** \$3

Screening Date 5-May-2008

Docket No. 2008-0752-PST-E

PCW

Respondent Adnan Najm dba Sunmart 352

Policy Revision 2 (September 2002)

Case ID No. 35864

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101943140

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 11

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

>> 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 18 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the April 17, 2008 investigation to the May 5, 2008 screening date.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$14

Violation Final Penalty Total \$3,154

This violation Final Assessed Penalty (adjusted for limits) \$3,154

Economic Benefit Worksheet

Respondent Adnan Najm dba Sunmart 352
Case ID No. 35864
Reg. Ent. Reference No. RN101943140
Media Petroleum Storage Tank
Violation No. 11

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				0.00	\$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	17-Apr-2008	8-Nov-2008	0.56	\$14	n/a	\$14
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 conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel. The date required is the date of the investigation and final date is the expected 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	\$500	TOTAL	\$14
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Screening Date 5-May-2008

Docket No. 2008-0752-PST-E

PCW

Respondent Adnan Najm dba Sunmart 352

Policy Revision 2 (September 2002)

Case ID No. 35864

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN101943140

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

V12 12

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 18 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the April 17, 2008 investigation.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$1,262

This violation Final Assessed Penalty (adjusted for limits) \$1,262

Economic Benefit Worksheet

Respondent Adnan Najm dba Sunmart 352

Case ID No. 35864

Reg. Ent. Reference No. RN101943140

Media Petroleum Storage Tank

Violation No. 12

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				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)	\$100	17-Apr-2008	8-Dec-2008	0.64	\$3	n/a	\$3

Notes for DELAYED costs

The estimated cost includes the amount required to permanently affix a metal label to each UST fill tube. The date required is the investigation date and the final date is the expected 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

\$100

TOTAL

\$3

Compliance History

Customer/Respondent/Owner-Operator:	CN601238819 NAJM, ADNAN	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101943140 SUNMART 352	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION	ACCOUNT NUMBER REGISTRATION	HG7470S 47269
Location:	3300 YELLOWSTONE BLVD, HOUSTON, TX, 77021	Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	April 28, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 28, 2003 to April 28, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Judy Kluge	Phone:	(817) 588-5825

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 04/22/2008 (638543)
 - 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
ENFORCEMENT
ACTION CONCERNING
ADNAN NAJM
DBA SUNMART 352;
RN101943140

§
§
§
§
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§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2008-0752-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7 and 26, TEX. HEALTH AND SAFETY CODE ch. 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Adnan Najm dba Sunmart 352 ("Mr. Najm").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Najm owned and operated a convenience store with retail sales of gasoline located at 3300 Yellowstone Boulevard, Houston, Harris County, Texas (the "Station").
2. The three underground storage tanks ("USTs") at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Najm's USTs contain a regulated substance as defined in the rules of the Commission. The Station consists of one or more substances as defined in TEX. HEALTH AND SAFETY CODE § 382.003(12).
3. During an investigation conducted on April 17, 2008, Mr. Craig Green and Mr. Daniel Stinson with the University of Texas – Arlington PST Stage II Office (TCEQ Contractor) documented that Mr. Najm:
 - a. Failed to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, records not

available for review included a copy of the applicable California Air Resources Board Executive Order and Stage II maintenance records;

- a. 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 system compliance testing had not been conducted;
- b. Failed to conduct daily and monthly inspections of the Stage II vapor recovery system;
- c. 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 operation of the vapor recovery system;
- d. Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems. 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 a part of the approved system. Specifically, the automatic tank gauge monitoring system printer was malfunctioning and not allowing any readings to be obtained;
- e. Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not functioning. Failed to provide release detection for the piping associated with the USTs. Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day;
- f. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days

before the expiration date. Specifically, the delivery certificate expired May 31, 2007;

- g. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Station received one delivery of fuel without a delivery certificate;
 - h. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs;
 - i. Failed to maintain the required UST records and make them immediately available for the inspection upon request by agency personnel;
 - j. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day; and
 - k. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.
4. Mr. Najm received notice of the violations on or about April 22, 2008.
 5. The Executive Director recognizes that as of May 30, 2008, Mr. Najm no longer owns or operates the Station.
 6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Adnan Najm dba Sunmart 352" (the "EDPRP") in the TCEQ Chief Clerk's office on October 27, 2008.
 7. By letter dated October 27, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Najm with notice of the EDPRP. According to the return receipt "green card," Mr. Najm received notice of the EDPRP on October 29, 2008, as evidenced by the signature on the card.

8. More than 20 days have elapsed since Mr. Najm received notice of the EDPRP, provided by the Executive Director. Mr. Najm failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Najm's USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH AND SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact Number 3.a., Mr. Najm violated 30 TEX. ADMIN. CODE § 115.246(1), (3), and (7)(A) and TEX. HEALTH AND SAFETY CODE § 382.085(b), by failing to maintain Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, records not available for review included a copy of the applicable California Air Resources Board Executive Order and Stage II maintenance records.
3. As evidenced by Finding of Fact Number 3.b., Mr. Najm violated 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH AND SAFETY CODE § 382.085(b), by failing 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 Stage II annual and triennial system compliance testing had not been conducted.
4. As evidenced by Finding of Fact Number 3.c., Mr. Najm violated 30 TEX. ADMIN. CODE § 115.244(1) and (3) and TEX. HEALTH AND SAFETY CODE § 382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system.
5. As evidenced by Finding of Fact Number 3.d., Mr. Najm violated 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH AND SAFETY CODE § 382.085(b), by failing 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 operation of the vapor recovery system.
6. As evidenced by Finding of Fact Number 3.e., Mr. Najm violated 30 TEX. ADMIN. CODE § 115.242(1)(C) and (3)(K) and TEX. HEALTH AND SAFETY CODE § 382.085(b), by failing to upgrade the Stage II equipment to ORVR compatible systems. 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 a part of the approved system. Specifically, the automatic tank gauge monitoring system printer was malfunctioning and not allowing any readings to be obtained.

7. As evidenced by Finding of Fact Number 3.f., Mr. Najm violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii), (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(a) and (c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not functioning. Failed to provide release detection for the piping associated with the USTs. Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
8. As evidenced by Finding of Fact Number 3.g., Mr. Najm violated 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the delivery certificate expired May 31, 2007.
9. As evidenced by Finding of Fact Number 3.h., Mr. Najm violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Station received one delivery of fuel without a delivery certificate.
10. As evidenced by Finding of Fact Number 3.i., Mr. Najm violated 30 TEX. ADMIN. CODE § 37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
11. As evidenced by Finding of Fact Number 3.j., Mr. Najm violated 30 TEX. ADMIN. CODE § 334.10(b), by failing to maintain the required UST records and make them immediately available for the inspection upon request by agency personnel.
12. As evidenced by Finding of Fact Number 3.k., Mr. Najm violated 30 TEX. ADMIN. CODE § 334.48(c), by failing to conduct effective manual or automatic inventory control procedures

for all USTs involved in the retail sale of petroleum substances used as motor fuel each operating day.

13. As evidenced by Finding of Fact Number 3.1., Mr. Najm violated 30 TEX. ADMIN. CODE § 334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST according to the UST registration and self-certification form.
14. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served Mr. Najm with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
15. As evidenced by Finding of Fact No. 8, Mr. Najm has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Najm and assess the penalty recommended by the Executive Director.
16. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Najm for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
17. An administrative penalty in the amount of twenty-two thousand seven hundred eight dollars (\$22,708.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
18. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Najm is assessed an administrative penalty in the amount of twenty-two thousand seven hundred eight dollars (\$22,708.00) for violations of the Texas Water Code, the Health & Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Najm's compliance with all the terms and conditions set forth in this Order completely

resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Adnan Najm dba Sunmart 352; Docket No. 2008-0752-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Najm. Mr. Najm is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
4. If Mr. Najm fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Najm's failure to comply is not a violation of this Order. Mr. Najm shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Najm shall notify the Executive Director within seven days after Mr. Najm 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Najm shall be made in writing to the Executive Director. Extensions are not effective until Mr. Najm receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Najm if the Executive Director determines that Mr. Najm has not complied with one or more of the terms or conditions in this Order.

7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Barham A. Richard. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Adnan Najm dba Sunmart 352” (the “EDPRP”) was filed with the Office of the Chief Clerk on October 27, 2008.

The EDPRP was mailed to Mr. Najm at its his last known address on October 27, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Najm received notice of the EDPRP on October 29, 2008, as evidenced by the signature on the card.

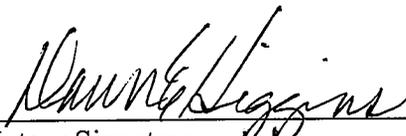
More than 20 days have elapsed since Mr. Najm received notice of the EDPRP. Mr. Najm failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Barham A. Richard, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 2nd day of April, A.D., 2009.



Notary Signature

