

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0512-PST-E TCEQ ID: RN102050507 CASE NO.:35617

RESPONDENT NAME: PETROLEUM WHOLESALE, L.P. DBA SUNMART 443

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

SITE WHERE VIOLATION(S) OCCURRED: 10841 Bissonnet Street, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on August 24, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Peipey Tang, Litigation Division, MC 175, (512) 239 0654
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Waste Enforcement Section, MC 128, (512) 239-5690

TCEQ Regional Contact: Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

Respondent: Mr. John W. Cook, Managing Partner, PWI GP L.L.C, General Partner of Petroleum Wholesale, L.P.,
 3648 FM 1960 W., Ste. 200, Houston, Texas, 77068

Respondent's Attorney: Mr. Stuart W. Lapp, General Counsel, Petroleum Wholesale, L.P., P.O. Box 4456,
 Houston, Texas, 77210

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 21, 2008</p> <p>Date of NOE Relating to this Case: February 29, 2008</p> <p>Background Facts: The EDPRP was filed on September 9, 2008. The Respondent filed an answer and the case was referred to SOAH. A settlement agreement was reached and the agreed order was signed on June 12, 2009.</p> <p>Current Compliance Status: No outstanding Technical Requirements. The Respondent's delivery certificate expires in March 2010.</p> <p>PST: 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 [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$2,375</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$2,375</p> <p>The Respondent paid the administrative penalty in full.</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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Executive Director recognizes that on February 29, 2008, a dynamic pressure test was conducted with a result of "pass."</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

DATES	Assigned	3-Mar-2008			
	PCW	14-May-2009	Screening	21-Mar-2008	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	Petroleum Wholesale, L.P. dba Sunmart 443		
Reg. Ent. Ref. No.	RN102050507		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	35617	No. of Violations	1
Docket No.	2008-0512-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel
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	\$2,500
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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	5% Enhancement	Subtotals 2, 3, & 7	\$125
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Notes	Enhancement for one previous NOV with the same violation.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	10% Reduction	Subtotal 5	\$250
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)
Notes	The Respondent came into compliance on February 29, 2008.	

Total EB Amounts	\$1	0% Enhancement*	Subtotal 6	\$0
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Approx. Cost of Compliance \$500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,375
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount \$2,375

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,375
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DEFERRAL	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.
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PAYABLE PENALTY	\$2,375
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Screening Date 21-Mar-2008

Docket No. 2008-0512-PST-E

PCW

Respondent Petroleum Wholesale, L.P. dba Sunmart 443

Policy Revision 2 (September 2002)

Case ID No. 35617

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN102050507

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one previous NOV with the same violation.

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

Screening Date 21-Mar-2008	Docket No. 2008-0512-PST-E	PCW		
Respondent Petroleum Wholesale, L.P. dba Sunmart 443	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 35617	<i>PCW Revision January 29, 2008</i>			
Reg. Ent. Reference No. RN102050507				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator Thomas Greimel				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 115.242(3) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the dynamic pressure test indicated a blockage in the piping.			
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	25%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	0%	
Matrix Notes	Human health or the environment 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		\$7,500		
			\$2,500	
Violation Events				
Number of Violation Events		1	Number of violation days	
		22		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty \$2,500	
	monthly	<input type="text"/>		
	quarterly	x		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
One quarterly event is recommended from the February 21, 2008 investigation date to the February 29, 2008 date of compliance.				
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$1	Violation Final Penalty Total	
			\$2,375	
This violation Final Assessed Penalty (adjusted for limits)			\$2,375	

Economic Benefit Worksheet

Respondent: Petroleum Wholesale, L.P. dba Sunmart 443

Case ID No.: 35617

Reg. Ent. Reference No.: RN102050507

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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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	21-Feb-2008	29-Feb-2008	0.0	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to repair defective Stage II vapor recovery system components. The Date Required is the date of the investigation. The Final Date is the date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Compliance History

Customer/Respondent/Owner-Operator:	CN601542616 Petroleum Wholesale, L.P.	Classification: AVERAGE	Rating: 2.47
Regulated Entity:	RN102050507 SUNMART 443	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		44876
Location:	10841 BISSONNET ST, HOUSTON, TX, 77099	Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	March 21, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 21, 2003 to March 21, 2008		

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

Name: Thomas Greimel Phone: (512) 239-5690

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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	07/26/2007	(568083)
2	02/29/2008	(636500)

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

Date:	07/26/2007	(568083)			
Self Report?	NO		Classification:	Moderate	
Citation:	30 TAC Chapter 115, SubChapter C 115.242(3)				
Description:	30 Tex. Admin. Code Section 115.242 (3)(G) - Failure to maintain 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, including vapor return lines, including such components as swivels, anti- recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic back-				

- 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
AGAINST PETROLEUM
WHOLESALE, L.P. DBA SUNMART
443;
RN102050507

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-0512-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Petroleum Wholesale, L.P. dba Sunmart 443 ("Petroleum Wholesale") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Petroleum Wholesale represented by Stuart W. Lapp, General Counsel for Petroleum Wholesale, L.P., appear before the Commission and together stipulate that:

1. Petroleum Wholesale owns and operates a convenience store with retail sales of gasoline located 10841 Bissonnet Street, Houston, Harris County, Texas (the "Station").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Petroleum Wholesale agree that the Commission has jurisdiction to enter this Agreed Order, and that Petroleum Wholesale is subject to the Commission's jurisdiction.
4. Petroleum Wholesale received notice of the violations alleged in Section II ("Allegations") on or about March 5, 2008.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Petroleum Wholesale of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of two thousand three hundred seventy-five dollars (\$2,375.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Petroleum Wholesale paid two thousand three hundred seventy-five dollars (\$2,375.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Petroleum Wholesale have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes on February 29, 2008, Petroleum Wholesale passed the TXP-103, dynamic pressure test.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Petroleum Wholesale has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

During an investigation conducted on February 21, 2008, a TCEQ Local Program, University of Texas – Arlington Stage II Petroleum Storage Tank investigator documented that Petroleum Wholesale violated 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing 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. Specifically, the dynamic pressure test indicated a blockage in the piping.

III. DENIALS

Petroleum Wholesale generally denies each allegation in Section II (“Allegations”).

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Petroleum Wholesale pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Petroleum Wholesale’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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Petroleum Wholesale, L.P. dba Sunmart 443, Docket No. 2008-0512-PST-E” to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon Petroleum Wholesale. Petroleum Wholesale is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Petroleum Wholesale 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.
4. 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.

5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Petroleum Wholesale, or three days after the date on which the Commission mails notice of the Order to Petroleum Wholesale, 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

Gregory Perdue

For the Executive Director

8/10/2009

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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

Chris Smith
Signature

6-12-09
Date

Chris Smith
Name (Printed or typed)
Authorized representative of
Petroleum Wholesale, L.P. dba Sunmart 443

Environmental Manager
Title