

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-0725-PST-E **TCEQ ID:** RN102351699 **CASE NO.:** 39619

**RESPONDENT NAME:** N & S Investments, Inc. dba Sonik Mart

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input checked="" type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Sonik Mart, 3908 Avenue Q, Lubbock, Lubbock County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 4, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Theresa Hagood, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-2540; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Kamlesh Patel, Director, N &amp; S Investments, Inc. dba Sonik Mart, 150 Slaton Road, Lubbock, Texas 79404  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 11, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 14, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>2) Failed to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>3) Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>4) 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 [30 TEX. ADMIN. CODE § 334.48(c)].</p>	<p><b>Total Assessed:</b> \$3,850</p> <p><b>Total Deferred:</b> \$770  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$180 (remaining \$2,900 due in 25 monthly payments of \$116 each)</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Implemented a release detection method for the USTs and began conducting volume measurement and reconciliation of inventory control records on April 1, 2010; and</p> <p>b. Began conducting proper inventory control procedure for the USTs on April 1, 2010.</p>

Additional ID No(s): PST ID 10262



# Penalty Calculation Worksheet (PCW)

<b>DATES</b>	Assigned	3-May-2010	Screening	4-May-2010	EPA Due	
	PCW	6-May-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	N & S Investments, Inc. dba: Sonik Mart
Reg. Ent. Ref. No.	RN102351699
Facility/Site Region	2-Lubbock
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	39619	No. of Violations	2
Docket No.	2010-0725-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Theresa Hagood
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	Subtotal 1	\$5,000
---	------------	---------

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

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

<b>Compliance History</b>	2.0% Enhancement	Subtotals 2, 3, & 7	\$100
---------------------------	------------------	---------------------	-------

Notes: Enhancement for one previous notice of violation with non-similar violations.

<b>Culpability</b>	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	------------	-----

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	Subtotal 5	\$1,250
--	------------	---------

<b>Economic Benefit</b>	0.0% Enhancement	Subtotal 6	\$0
-------------------------	------------------	------------	-----

Total EB Amounts	\$6
Approx. Cost of Compliance	\$2,000

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	Final Subtotal	\$3,850
-----------------------------	----------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	Adjustment	\$0
---	------	------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$3,850
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	Final Assessed Penalty	\$3,850
-----------------------------------	------------------------	---------

<b>DEFERRAL</b>	20.0% Reduction	Adjustment	-\$770
-----------------	-----------------	------------	--------

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

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$3,080
------------------------	---------

Screening Date 4-May-2010

Docket No. 2010-0725-PST-E

PCW

Respondent N & S Investments, Inc. dba Sonik Mart

Policy Revision 2 (September 2002)

Case ID No. 39619

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102351699

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Theresa Hagood

**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	1	2%
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)** 2%

>> **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 notice of violation with non-similar violations.

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

Screening Date 4-May-2010

Docket No. 2010-0725-PST-E

PCW

Respondent N & S Investments, Inc. dba Sonik Mart

Policy Revision 2 (September 2002)

Case ID No. 39819

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102351699

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Theresa Hagood

Violation Number 1

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

Violation Description

Failed to monitor the underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 85 days between each monitoring). Failed to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, 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	Harm			Percent
	Major	Moderate	Minor	
				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 21

mark only one with an x	daily	
	weekly	
	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 March 11, 2010 investigation date to the April 1, 2010 compliance date.

Good Faith Efforts to Comply

25.0% Reduction \$625

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

Notes

The Respondent came into compliance on April 1, 2010.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,925

This violation Final Assessed Penalty (adjusted for limits) \$1,925

## Economic Benefit Worksheet

**Respondent:** N & S Investments, Inc. dba Sonik Mart  
**Case ID No.:** 39619  
**Reg. Ent. Reference No.:** RN102351699  
**Media:** Petroleum Storage Tank  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	16

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

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	11-Mar-2010	1-Apr-2010	0.06	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to monitor the USTs for releases including volume measurement and reconciliation of inventory control records. The date required is the investigation date and the final date is the date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$4

Screening Date 4-May-2010

Docket No. 2010-0725-PST-E

PCW

Respondent N & S Investments, Inc. dba Sonik Mart

Policy Revision 2 (September 2002)

Case ID No. 39619

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102351899

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Theresa Hagood

Violation Number

2

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.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

21 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the March 11, 2010 investigation date to the April 1, 2010 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$625

	Before NOV	NOV to EDPR/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on April 1, 2010.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,925

This violation Final Assessed Penalty (adjusted for limits) \$1,925

## Economic Benefit Worksheet

**Respondent** N & S Investments, Inc. dba Sonik Mart  
**Case ID No.** 39819  
**Reg. Ent. Reference No.** RN102351699  
**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
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	11-Mar-2010	1-Apr-2010	0.06	\$1	n/a	\$1
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 proper inventory control procedures. 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				0.00	\$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**

\$1

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603405499    N & S INVESTMENTS INC	Classification: AVERAGE	Rating: 1.80
Regulated Entity:	RN102351699    SONIK MART	Classification: AVERAGE	Site Rating: 1.80
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	10262
Location:	3908 AVENUE Q, LUBBOCK, TX, 79412		
TCEQ Region:	REGION 02 - LUBBOCK		
Date Compliance History Prepared:	May 24, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 06, 2005 to May 06, 2010		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Theresa Hagood</u>	Phone:	<u>(512) 239 - 2540</u>

## 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/operator of the site during the compliance period?      Yes
3. If Yes, who is the current owner/operator?
 

OWN	N & S INVESTMENTS INC
-----	-----------------------
4. If Yes, who was/were the prior owner(s)/operator(s) ?
 

OPR	N & S INVESTMENTS INC
OWNOPR	E-Z Mart Stores, Inc.
5. When did the change(s) in owner or operator occur?
 

11/21/2006	OWNOPR	E-Z Mart Stores, Inc.
01/15/2009	OPR	N & S INVESTMENTS INC
6. Rating Date: 9/1/2009 Repeat Violator: NO

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/22/2005	(406046)
2	09/08/2008	(687856)
3	09/16/2008	(688493)
4	04/14/2010	(795348)

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

Date: 07/25/2008 (687856)      CN603405499

Self      NO      Classification:      Moderate

Citation:      30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description:      Failure of owner/operator to amend, update, or change UST registration information within 30 days of its occurrence.

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  
N & S INVESTMENTS, INC. DBA  
SONIK MART  
RN102351699**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2010-0725-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding N & S Investments, Inc. dba Sonik Mart ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 3908 Avenue Q in Lubbock, Lubbock County, Texas (the "Facility").
2. The Facility's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 19, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Eight Hundred Fifty Dollars (\$3,850) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid One Hundred Eighty Dollars (\$180) of the administrative penalty and Seven Hundred Seventy Dollars (\$770) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Nine Hundred Dollars (\$2,900) of the administrative penalty shall be payable in 25 monthly payments of One Hundred Sixteen Dollars (\$116) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
  - a. Implemented a release detection method for the USTs and began conducting volume measurement and reconciliation of inventory control records on April 1, 2010; and
  - b. Began conducting proper inventory control procedure for the USTs on April 1, 2010.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

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

1. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on March 11, 2010.
2. Failed to conduct reconciliation of inventory control records at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on March 11, 2010.
3. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on March 11, 2010.
4. 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, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on March 11, 2010.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: N & S Investments, Inc. dba Sonik Mart, Docket No. 2010-0725-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Joan Szolter*  
For the Executive Director

9/13/2010  
Date

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

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

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

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

*Kamlesh Patel*  
Signature

July 18, 2010  
Date

Kamlesh Patel,  
Name (Printed or typed)  
Authorized Representative of  
N & S Investments, Inc. dba Sonik Mart

Director  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

