

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2009-1416-PST-E TCEQ ID: RN102027331 CASE NO.: 38283**  
**RESPONDENT NAME: Petroleum Wholesale, L.P. dba Sunmart 154**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Sunmart 154, 4530 Airline Drive, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> Convenience store with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on February 22, 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. Elvia Maske, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0789; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Stuart Lapp, Registered Agent and General Counsel, Petroleum Wholesale, L.P., P.O. Box 4456, Houston, Texas 77210  Mr. Chris Smith, Environmental Manager, Petroleum Wholesale, L.P., P.O. Box 4456, Houston, Texas 77210  <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> June 23, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 8, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>1) Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the vapor vacuum motors were not operational [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failure to verify proper operation of the Stage II equipment at least once every 12 months, and 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 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$3,542</p> <p><b>Total Deferred:</b> \$708  <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 to General Revenue:</b> \$2,834</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:</p> <p>a. Replaced the Stage II vapor vacuum motors on July 1, 2009; and</p> <p>b. Conducted the Stage II annual and triennial compliance testing with passing results on July 2, 2009.</p>

Additional ID No(s): 65069

**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision October 30, 2008

**TCFQ**  
**DATES** Assigned 13-Jul-2009  
 PCW 25-Nov-2009 Screening 31-Aug-2009 EPA Due

**RESPONDENT/FACILITY INFORMATION**  
 Respondent Petroleum Wholesale, L.P. dba Sunmart 154  
 Reg. Ent. Ref. No. RN102027331  
 Facility/Site Region 12-Houston Major/Minor Source Minor

**CASE INFORMATION**  
 Enf./Case ID No. 38283 No. of Violations 2  
 Docket No. 2009-1416-PST-E Order Type 1660  
 Media Program(s) Petroleum Storage Tank Government/Non-Profit No  
 Multi-Media  Enf. Coordinator Elvia Maske  
 EC's Team Enforcement Team 7  
 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

**Penalty Calculation Section**

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1  \$3,500

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**  
 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 5.0% Enhancement Subtotals 2, 3, & 7  \$175

Notes  Enhancement for one NOV with same or similar violations.

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

Notes  The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** Subtotal 5  \$875

**Economic Benefit** Subtotal 6  \$0

Total EB Amounts  \$743  
 Approx. Cost of Compliance  \$1,120  
 0.0% Enhancement\*  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal  \$2,800

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  26.5% Adjustment  \$742

Reduces or enhances the Final Subtotal by the indicated percentage.

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

**Final Penalty Amount**  \$3,542

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty  \$3,542

**DEFERRAL**  20.0% Reduction Adjustment  -\$708

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

Notes  Deferral offered for expedited settlement.

**PAYABLE PENALTY**  \$2,834

**Screening Date** 31-Aug-2009

**Docket No.** 2009-1416-PST-E

**PCW**

**Respondent** Petroleum Wholesale, L.P. dba Sunmart 154

*Policy Revision 2 (September 2002)*

**Case ID No.** 38283

*PCW Revision October 30, 2009*

**Reg. Ent. Reference No.** RN102027331

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Elvia Maske

### 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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgements or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	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)** 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 NOV with same or similar violations.

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

<b>Screening Date</b> 31-Aug-2009	<b>Docket No.</b> 2009-1416-PST-E	<b>PCW</b>	
<b>Respondent</b> Petroleum Wholesale, L.P. dba Sunmart 154	<small>Policy Revision 2 (September 2002)</small>		
<b>Case ID No.</b> 38283	<small>PCW Revision October 30, 2008</small>		
<b>Reg. Ent. Reference No.</b> RN102027331			
<b>Media [Statute]</b> Petroleum Storage Tank			
<b>Enf. Coordinator</b> Elvia Maske			
<b>Violation Number</b> <input type="text" value="1"/>			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 115.242(3) and Tex. Health &amp; Safety Code § 382.085(b)"/>		
<b>Violation Description</b>	<input type="text" value="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 vapor vacuum motors were not operational."/>		
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
<b>OR</b>	<b>Harm</b>		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	x	<input type="text"/>
			<b>Percent</b> <input type="text" value="10%"/>
<b>&gt;&gt; Programmatic Matrix</b>			
<b>Falsification</b>			
Major      Moderate      Minor			
<input type="text"/>			<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	<input type="text" value="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."/>		
<b>Adjustment</b>			<input type="text" value="\$9,000"/>
			<input type="text" value="\$1,000"/>
<b>Violation Events</b>			
<b>Number of Violation Events</b> <input type="text" value="1"/>		<input type="text" value="8"/>	<b>Number of violation days</b>
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	x	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
<input type="text" value="One quarterly event is recommended from the June 23, 2009 investigation date to the July 1, 2009 compliance date."/>			
<b>Good Faith Efforts to Comply</b>			
<b>25.0% Reduction</b>		<input type="text" value="\$250"/>	
<small>Before NOV      NOV to EDRP/Settlement Offer</small>			
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	x	<input type="text"/>	
N/A	<input type="text"/>	<small>(mark with x)</small>	
<b>Notes</b>	<input type="text" value="The Respondent achieved compliance on July 1, 2009, prior to the NOE dated July 8, 2009."/>		
<b>Violation Subtotal</b>			<input type="text" value="\$750"/>
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b> <input type="text" value="\$1"/>		<b>Violation Final Penalty Total</b> <input type="text" value="\$1,012"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			<input type="text" value="\$1,012"/>

## Economic Benefit Worksheet

**Respondent** Petroleum Wholesale, L.P. dba Sunmart 154  
**Case ID No.** 38283  
**Reg. Ent. Reference No.** RN102027331  
**Media** Petroleum Storage Tank  
**Violation No.** 1

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$500	23-Jun-2009	1-Jul-2009	0.02	\$1	n/a	\$1

**Notes for DELAYED costs**  
 Estimated cost to repair the defective Stage II vapor recovery system components. The date required is the date of the investigation and 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** **TOTAL**  
\$500 \$1

<b>Screening Date</b> 31-Aug-2009	<b>Docket No.</b> 2009-1416-PST-E	<b>PCW</b>														
<b>Respondent</b> Petroleum Wholesale, L.P. dba Sunmart 154	<i>Policy Revision 2 (September 2002)</i>															
<b>Case ID No.</b> 38283	<i>PCW Revision October 30, 2008</i>															
<b>Reg. Ent. Reference No.</b> RN102027331																
<b>Media [Statute]</b> Petroleum Storage Tank																
<b>Enf. Coordinator</b> Elvia Maske																
<b>Violation Number</b> <input type="text" value="2"/>																
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 115.245(2) and Tex. Health &amp; Safety Code § 382.085(b)"/>															
<b>Violation Description</b>	<input type="text" value="Failed to verify proper operation of the Stage II equipment at least once every 12 months, and 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."/>															
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>														
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																
<b>OR</b>	<b>Harm</b>															
	Release    Major    Moderate    Minor															
	Actual <input type="text"/>															
	Potential <input type="text" value="x"/>	<b>Percent</b> <input type="text" value="25%"/>														
<b>&gt;&gt; Programmatic Matrix</b>																
	Falsification    Major    Moderate    Minor															
	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>														
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation."/>															
	<b>Adjustment</b>	<input type="text" value="\$7,500"/>														
		<input type="text" value="\$2,500"/>														
<b>Violation Events</b>																
	<b>Number of Violation Events</b> <input type="text" value="1"/>	<input type="text" value="1095"/> <b>Number of violation days</b>														
<i>mark only one with an x</i>	<table border="1" style="border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text" value="x"/></td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text" value="x"/>	<b>Violation Base Penalty</b> <input type="text" value="\$2,500"/>
daily	<input type="text"/>															
weekly	<input type="text"/>															
monthly	<input type="text"/>															
quarterly	<input type="text"/>															
semiannual	<input type="text"/>															
annual	<input type="text"/>															
single event	<input type="text" value="x"/>															
	<input type="text" value="One single event is recommended for the three-year period preceding the June 23, 2009 investigation."/>															
<b>Good Faith Efforts to Comply</b>	<b>25.0% Reduction</b>	<input type="text" value="\$625"/>														
	Before NOV    NOV to EDRP/Settlement Offer															
	Extraordinary <input type="text"/>															
	Ordinary <input type="text" value="x"/>															
	N/A <input type="text"/>	<i>(mark with x)</i>														
<b>Notes</b>	<input type="text" value="The Respondent achieved compliance on July 2, 2009, prior to the NOE dated July 8, 2009."/>															
	<b>Violation Subtotal</b>	<input type="text" value="\$1,875"/>														
<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>															
<b>Estimated EB Amount</b> <input type="text" value="\$742"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$2,530"/>														
	<b>This violation Final Assessed Penalty (adjusted for llmts)</b> <input type="text" value="\$2,530"/>															

### Economic Benefit Worksheet

**Respondent** Petroleum Wholesale, L.P. dba Sunmart 154  
**Case ID No.** 38283  
**Reg. Ent. Reference No.** RN102027331  
**Media** Petroleum Storage Tank  
**Violation No.** 2

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$620	23-Jun-2006	2-Jul-2009	3.95	\$122	\$620	\$742
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual cost to conduct the required Stage II testing based on electronic mail submitted by the Respondent for labor and materials. The date required is three years prior to the investigation and the final date is the date of compliance.

Approx. Cost of Compliance

\$620

TOTAL

\$742

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601542616 Petroleum Wholesale, L.P. Classification: AVERAGE Rating: 3.35  
Regulated Entity: RN102027331 Sunmart 154 Classification: AVERAGE Site Rating: 1.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 65069  
REGISTRATION  
Location: 4530 AIRLINE DR, HOUSTON, TX, 77022  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: August 27, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 27, 2004 to August 27, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Elvia Maske Phone: (512) 239 - 0789

## 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? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 02/08/2007 | (538036) |
| 2 | 08/31/2007 | (571521) |
| 3 | 07/08/2009 | (760623) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |                                                                                                                                                                                                                                                                                                                                  |          |                 |          |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------|----------|
| Date:        | 02/08/2007                                                                                                                                                                                                                                                                                                                       | (538036) | Classification: | Moderate |
| Self Report? | NO                                                                                                                                                                                                                                                                                                                               |          |                 |          |
| 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, includin |          |                 |          |
- 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  
PETROLEUM WHOLESALE, L.P.  
DBA SUNMART 154  
RN102027331

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-1416-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 Petroleum Wholesale, L.P. dba Sunmart 154 ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 4530 Airline Drive in Houston, Harris County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 13, 2009.
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 Five Hundred Forty-Two Dollars (\$3,542) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Two Thousand Eight Hundred Thirty-Four Dollars (\$2,834) of the administrative penalty and Seven Hundred Eight Dollars (\$708) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred 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 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 Station:
  - a. Replaced the Stage II vapor vacuum motors on July 1, 2009; and
  - b. Conducted the Stage II annual and triennial compliance testing with passing results on July 2, 2009.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

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

1. Failed to 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, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 23, 2009. Specifically, the vapor vacuum motors were not operational.
2. Failed to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first, in violation of 30 TEX. ADMIN.

CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on June 23, 2009. Specifically, the Stage II annual and triennial system compliance testing had not been conducted.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Petroleum Wholesale, L.P. dba Sunmart 154, Docket No. 2009-1416-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. 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.
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 under this Agreed Order.
5. 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

John Szallier  
For the Executive Director

1/29/2010  
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.

Chris Smith  
Signature

12/03/09  
Date

CHRIS SMITH  
Name (Printed or typed)  
Authorized Representative of  
Petroleum Wholesale, L.P. dba Sunmart 154

ENVIRONMENTAL MANAGER  
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.