

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2008-1674-PST-E RN102015328 CASE NO. 36698
RESPONDENT NAME: PETROLEUM WHOLESALE, L.P. DBA SUNMART 438

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"/> IMMEDIATE 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: 306 Highway 71 West, Bastrop, Bastrop 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 location. There are four pending enforcement actions regarding this respondent: 2008-1170-MLM-E (at SOAH), 2009-1926-PST-E (pending agenda), 2009-1938-PST-E (pending agenda), and 2010-0615-PST-E (EDPRP filed 07/09/10).

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

COMMENTS RECEIVED: The *Texas Register* comment period expired July 26, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789

TCEQ Regional Contact: Mr. Barry Kalda, Austin Regional Office, MC R-10, (512) 239-2929

Respondent: Mr. Chris Smith, Environmental Manager, Petroleum Wholesale, L.P. dba Sunmart 438, P.O. Box 4456, Houston, Texas 77210

Respondent's Attorney: Mr. Stuart W. Lapp, General Counsel, Petroleum Wholesale, L.P. dba Sunmart 438, 8550 Technology Forest Place, The Woodlands, Texas 77380

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: August 4, 2008</p> <p>Date of NOE Relating to this Case: October 24, 2008</p> <p>Background Facts: The case was referred to the Litigation Division on February 13, 2009. The EDPRP was filed on April 1, 2009. Respondent filed an answer and the case was referred to SOAH. Discovery was exchanged and an Evidentiary Hearing was scheduled for April 15, 2010. Settlement was achieved and the agreed order was signed on April 13, 2010.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to report two suspected releases to the agency within 24 hours of discovery [30 TEX. ADMIN. CODE § 334.72(3)]. Failed to investigate two suspected releases of regulated substances within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74]. Failed to monitor USTs for releases at a frequency of at least once per 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)]. Failed to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)]. Failed to ensure that emergency shutoff valves (also known as shear or impact valves) are installed and securely anchored at the base of the dispensers [30 TEX. ADMIN. CODE § 334.45(c)(3)(A)]. 	<p>Total Assessed: \$34,807</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 Paid to General Revenue: \$34,807</p> <p>Respondent paid the administrative penalty in full.</p> <p>Site Compliance History Classification: <input checked="" type="checkbox"/> High <input 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>Ordering Provisions: Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Install or implement a release detection method for all USTs at the Station and test the line leak detectors for performance and operational reliability; Install and secure emergency shutoff valves for each dispenser; Install overfill prevention equipment on each tank, begin maintaining the spill and overfill prevention devices in proper operating condition including, but not limited to cleaning the spill buckets, installing hand pumps and implement procedures to assure spill and overfill prevention devices are inspected and serviced; Submit an amended UST registration to reflect the current release detection method for the USTs; and Install a pressure-vacuum relief valve in each UST vent line and replace the dry break cap for Tank No. 2 and fill cap for Tank No. 1. Within 60 days: <ol style="list-style-type: none"> Establish and implement a process for reporting a suspected or confirmed release; and Conduct an investigation of the suspected releases and implement appropriate corrective measures. Within 75 days, submit written certification demonstrating compliance.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>6. Failed to ensure that all spill and overfill prevention devices are maintained in good operating condition [30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2)].</p> <p>7. Failed to equip each tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level for the tank [30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2)].</p> <p>8. Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>9. Failed to comply with vapor control requirements for emission limitation anywhere in the liquid transfer or vapor balance system [30 TEX. ADMIN. CODE § 115.222(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>10. Failed to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch [30 TEX. ADMIN. CODE § 115.222(6) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>		



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	10-Oct-2008			
	PCW	12-Apr-2010	Screening	20-Oct-2008	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Petroleum Wholesale, L.P. dba Sunmart 438				
Reg. Ent. Ref. No.	RN102015328				
Facility/Site Region	11-Austin	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	36698	No. of Violations	7		
Docket No.	2008-1674-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 6		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$33,500
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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	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 Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,859	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$12,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$33,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	3.9%	Adjustment	\$1,307
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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. 1 and 3.

Final Penalty Amount	\$34,807
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$34,807
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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	\$34,807
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Screening Date 20-Oct-2008

Docket No. 2008-1674-PST-E

PCW

Respondent Petroleum Wholesale, L.P. dba Sunmart 438

Policy Revision 2 (September 2002)

Case ID No. 36698

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102015328

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 (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%
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) 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 20-Oct-2008 **Docket No.** 2008-1674-PST-E **PCW**
Respondent Petroleum Wholesale, L.P. dba Sunmart 438 *Policy Revision 2 (September 2002)*
Case ID No. 36698 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102015328
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number

Rule Cite(s)

Violation Description

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

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 Petroleum Wholesale, L.P. dba Sunmart 438
Case ID No. 36698
Reg. Ent. Reference No. RN102015328
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
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]				0.00	\$0	\$0	\$0
Other (as needed)	\$200	1-Apr-2008	2-Jun-2008	1.09	\$11	\$200	\$211

Notes for AVOIDED costs

Estimated cost to report two suspected releases to the agency. Date Required is the date of the first suspected release. Final Date is the date second suspected release report was due.

Approx. Cost of Compliance

\$200

TOTAL

\$211

Screening Date 20-Oct-2008 **Docket No.** 2008-1674-PST-E **PCW**
Respondent Petroleum Wholesale, L.P. dba Sunmart 438 *Policy Revision 2 (September 2002)*
Case ID No. 36698 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102015328
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number

Rule Cite(s)

Violation Description

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="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

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"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

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 Petroleum Wholesale, L.P. dba Sunmart 438
Case ID No. 36698
Reg. Ent. Reference No. RN102015328
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				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)	\$8,000	1-May-2008	1-Jun-2009	1.08	\$434	n/a	\$434

Notes for DELAYED costs

Estimated cost to investigate two suspected releases. Date Required is 30 days after the discovery of the first suspected release. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$8,000

TOTAL

\$434

Screening Date 20-Oct-2008 **Docket No.** 2008-1674-PST-E **PCW**
Respondent Petroleum Wholesale, L.P. dba Sunmart 438 *Policy Revision 2 (September 2002)*
Case ID No. 36698 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102015328
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description
 Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). Also, 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.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	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 77 Number of violation days

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

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the August 4, 2008 investigation date to the October 20, 2008 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	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 for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$1,152 **Violation Final Penalty Total** \$2,598

This violation Final Assessed Penalty (adjusted for limits) \$2,598

Economic Benefit Worksheet

Respondent Petroleum Wholesale, L.P. dba Sunmart 438
Case ID No. 36698
Reg. Ent. Reference No. RN102015328
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
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	4-Aug-2008	1-May-2009	0.74	\$55	n/a	\$55

Notes for DELAYED costs

Estimated cost of monitoring all USTs for releases. Date Required is the investigation date. Final Date is the estimated 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]	\$1,000	4-Aug-2007	4-Aug-2008	1.92	\$96	\$1,000	\$1,096
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost for line leak detector tests. Date Required is one year prior to the investigation. Final Date is the investigation date.

Approx. Cost of Compliance

\$2,500

TOTAL

\$1,152

Screening Date 20-Oct-2008 **Docket No.** 2008-1674-PST-E **PCW**
Respondent Petroleum Wholesale, L.P. dba Sunmart 438 *Policy Revision 2 (September 2002)*
Case ID No. 36698 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102015328
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.45(c)(3)(A)

Violation Description Failed to ensure that emergency shutoff valves (also known as a shear or impact valves) are installed and securely anchored at the base of the dispensers. Specifically, shear valves were not anchored.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent 10%
	Release	Major	Moderate	Minor	
	Actual				
	Potential		x		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent 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 \$9,000

\$1,000

Violation Events

Number of Violation Events 1 77 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the August 4, 2008 investigation date to the October 20, 2008 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	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 for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$10 **Violation Final Penalty Total** \$1,039

This violation Final Assessed Penalty (adjusted for limits) \$1,039

Economic Benefit Worksheet

Respondent Petroleum Wholesale, L.P. dba Sunmart 438
Case ID No. 36698
Reg. Ent. Reference No. RN102015328
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	\$200	4-Aug-2008	1-May-2009	0.74	\$0	\$10	\$10
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 properly install and maintain anchors at the Station. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$10

Screening Date 20-Oct-2008 **Docket No.** 2008-1674-PST-E **PCW**
Respondent Petroleum Wholesale, L.P. dba Sunmart 438 *Policy Revision 2 (September 2002)*
Case ID No. 36698 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102015328
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 334.51(a)(6) and (b)(2)(C) and Tex. Water Code § 26.3475(c)(2)
Violation Description
 Failed to ensure that all spill and overflow prevention devices are maintained in good operating condition. Specifically, during the investigation it was noted that the spill bucket at Tank No. 3 was full of debris and was not being properly maintained. Also, failed to equip each tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level for the tank.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent
	Release	Major	Moderate	Minor	
	Actual				
	Potential		x		10%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					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 \$9,000

\$1,000

Violation Events

Number of Violation Events 1 77 Number of violation days

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

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the August 4, 2008 investigation date to the October 20, 2008 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

Notes
The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$33 **Violation Final Penalty Total** \$1,039

This violation Final Assessed Penalty (adjusted for limits) \$1,039

Economic Benefit Worksheet

Respondent Petroleum Wholesale, L.P. dba Sunmart 438
Case ID No. 36698
Reg. Ent. Reference No. RN102015328
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	\$500	4-Aug-2008	1-May-2009	0.74	\$1	\$25	\$26
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)	\$200	4-Aug-2008	1-May-2009	0.74	\$7	n/a	\$7

Notes for DELAYED costs

Estimated cost to clean and repair the spill bucket drain valve, maintain the overfill protection equipment in proper working condition (\$200), and install overfill prevention device (\$500). Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$700

TOTAL

\$33

Screening Date 20-Oct-2008 **Docket No.** 2008-1674-PST-E **PCW**
Respondent Petroleum Wholesale, L.P. dba Sunmart 438 *Policy Revision 2 (September 2002)*
Case ID No. 36698 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102015328
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description
 Failed to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration had not been amended to reflect the current release detection method for the USTs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Major	Moderate	Minor	
	Actual	Potential	Percent	
				0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	
	x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 77 Number of violation days

mark only one with an x

daily	
weekly	
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 August 4, 2008 investigation.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

Notes
 The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$4 **Violation Final Penalty Total** \$1,039

This violation Final Assessed Penalty (adjusted for limits) \$1,039

Economic Benefit Worksheet

Respondent Petroleum Wholesale, L.P. dba Sunmart 438
Case ID No. 36698
Reg. Ent. Reference No. RN102015328
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)	\$100	4-Aug-2008	1-May-2009	0.74	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to submit an updated UST registration. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 20-Oct-2008 **Docket No.** 2008-1674-PST-E **PCW**
Respondent Petroleum Wholesale, L.P. dba Sunmart 438 *Policy Revision 2 (September 2002)*
Case ID No. 36698 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102015328
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 115.222(3) and (6) and Tex. Health & Safety Code § 382.085(b)

Violation Description
 Failed to comply with vapor control requirements for emission limitation anywhere in the liquid transfer or vapor balance system. Specifically, the dry break cap was missing at Tank No. 2 and the fill cap was broken at Tank No. 1. Also, failed to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch. Specifically, the vent pipes were not equipped with pressure-vacuum relief valves.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

mark only one with an x

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

One quarterly event is recommended based on documentation of the violation during the August 4, 2008 investigation date to the October 20, 2008 screening date.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

Notes
 The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

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 Petroleum Wholesale, L.P. dba Sunmart 438
Case ID No. 36698
Reg. Ent. Reference No. RN102015328
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	\$300	4-Aug-2008	1-May-2009	0.74	\$1	\$15	\$16
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 replace the dry break, the fill cap, and properly install the pressure-vaccum relief valves. Date Required is the investigation date. Final Date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$16

Compliance History Report

Customer/Respondent/Owner-Operator: CN601542616 Petroleum Wholesale, L.P. Classification: AVERAGE Rating: 3.37
Regulated Entity: RN102015328 Sunmart 438 Classification: HIGH Site Rating: 0.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 22745
REGISTRATION
Location: 306 HIGHWAY 71 W, BASTROP, TX, 78602 Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: October 21, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 21, 2003 to October 21, 2008
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 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 judgments, 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 05/05/2006 (462717)
2 10/03/2008 (689398)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- 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 438;
RN102015328**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-1674-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 the Petroleum Wholesale, L.P. dba Sunmart 438 (“Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Stuart Lapp, General Counsel, Petroleum Wholesale, L.P., appear before the Commission and together stipulate that:

1. Respondent owns and operates a convenience store with retail sales of gasoline and four underground storage tanks (“USTs”) located at 306 Highway 71 West in Bastrop, Bastrop County, Texas (the “Station”). The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the Commission. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
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. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and TCEQ rules.
3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II (“Allegations”), nor of any statute or rule.

5. An administrative penalty in the amount of thirty-four thousand eight hundred seven dollars (\$34,807.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Respondent paid thirty-four thousand eight hundred seven dollars (\$34,807.00) of the administrative penalty.
6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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

1. During an investigation conducted on August 4, 2008, TCEQ staff documented that Respondent violated:
 - a. 30 TEX. ADMIN. CODE § 334.72(3) by failing to report two suspected releases to the agency within 24 hours of discovery. Specifically, the diesel tank inventory control records for the months of February, March and April 2008, and the super unleaded tank inventory control records for the months of April and May 2008 indicated two suspected releases that were not reported;
 - b. 30 TEX. ADMIN. CODE § 334.74 by failing to investigate two suspected releases of regulated substances within 30 days of discovery. Specifically, the diesel tank inventory control records for the months of February and March 2008, and the super unleaded inventory control records for the months of April and May 2008 indicated suspected releases that were not investigated;

- c. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring);
 - d. 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) by failing 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;
 - e. 30 TEX. ADMIN. CODE § 334.45(c)(3)(A) by failing to ensure that emergency shutoff valves (also known as a shear or impact valves) are installed and securely anchored at the base of the dispensers. Specifically, the shear valves were not anchored;
 - f. 30 TEX. ADMIN. CODE § 334.51(a)(6) and TEX. WATER CODE § 26.3475(c)(2) by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition. Specifically, during the investigation it was noted that the spill bucket at Tank No. 3 was full of debris and was not being properly maintained;
 - g. 30 TEX. ADMIN. CODE § 334.51(b)(2)(C) and TEX. WATER CODE § 26.3475(c)(2) by failing to equip each tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level for the tank;
 - h. 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to notify the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition. Specifically, the registration had not been amended to reflect the current release detection method for the USTs;
 - i. 30 TEX. ADMIN. CODE § 115.222(3) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to comply with vapor control requirements for emission limitation anywhere in the liquid transfer or vapor balance system. Specifically, the dry break cap was missing at Tank No. 2 and the fill cap was broken at Tank No. 1; and
 - j. 30 TEX. ADMIN. CODE § 115.222(6) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch. Specifically, the vent pipes were not equipped with pressure-vacuum relief valves.
2. Respondent received notice of the violations on or about October 29, 2008.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of TCEQ rules and state statute. The payment of this administrative penalty and 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 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 438, Docket No. 2008-1674-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. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Respondent shall:
 - i. Install or implement a release detection method for all USTs at the Station and test the line leak detectors for performance and operational reliability, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - ii. Install and secure emergency shutoff valves for each dispenser, in accordance with 30 TEX. ADMIN. CODE § 334.45;
 - iii. Install overfill prevention equipment on each tank, begin maintaining the spill and overfill prevention devices in proper operating condition including, but not limited to cleaning the spill buckets, installing hand pumps and implement procedures to assure spill and overfill prevention devices are inspected and serviced, in accordance with 30 TEX. ADMIN. CODE § 334.51;
 - iv. Submit an amended UST registration to reflect the current release detection method for the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting & Registration Support Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- v. Install a pressure-vacuum relief valve in each UST vent line and replace the dry break cap for Tank No. 2 and fill cap for Tank No.1, in accordance with 30 TEX. ADMIN. CODE §115.222.
- b. Within 60 days after the effective date of this Agreed Order, Respondent shall:
 - i. Establish and implement a process for reporting a suspected or a confirmed release, in accordance with 30 TEX. ADMIN. CODE § 334.72; and
 - ii. Conduct an investigation of the suspected releases and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74.
- c. Within 75 days after the effective date of this Agreed Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.b.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

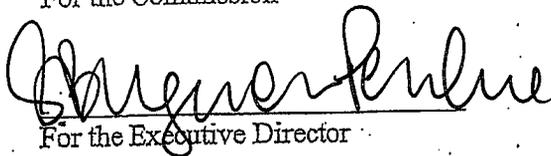
Barry Kalda, Waste Section Manager
Texas Commission on Environmental Quality
Austin Regional Office
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

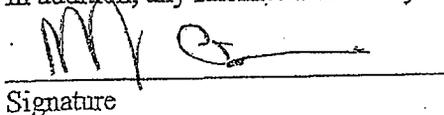
7/21/2010
Date

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 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 Respondent's compliance history;
- Greater scrutiny of any permit applications submitted by Respondent;
- 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 Respondent;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Respondent; and
- TCEQ seeking other relief as authorized by law.

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


Signature

4-13-10
Date

Richard Osburn
Name (Printed or typed)

Vice President
Title

Authorized representative of
Petroleum Wholesale, L.P. dba Sunmart 438