

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2009-1615-PST-E

RN101964542

CASE NO. 38479

RESPONDENT NAME: BA PROPERTIES MANAGEMENT, INC. D/B/A SUNMART 318

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

| CASE TYPE: | | |
|--|--|--|
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE |
| <input type="checkbox"/> PUBLIC WATER SUPPLY | <input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |

SITE WHERE VIOLATION(S) OCCURRED: 3305 Dowling Street, Houston, Harris County

TYPE OF OPERATION: convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No N/A

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired April 4, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Xavier Guerra, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492

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

Respondent: Badar Sharif, Vice President, BA Properties Management, Inc., 3033 Elgin Street, Houston, Texas 77004

Respondent's Attorney: Not represented by counsel on this enforcement matter.

**RESPONDENT NAME: BA PROPERTIES MANAGEMENT, INC.
D/B/A SUNMART 318
DOCKET NO. 2009-1615-PST-E**

| 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: N/A</p> <p>Date of Investigation: September 10, 2009</p> <p>Date of NOE: September 29, 2009</p> <p>Background Facts: The EDPRP was filed on March 10, 2010. Respondent filed an answer and the case was referred to SOAH. The agreed order was signed on December 1, 2010.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation demonstrating compliance with the technical requirements. Respondent's delivery certificate expires January 31, 2012.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. | <p>Total Assessed: \$4,203</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$143/\$4,060</p> <p>Respondent paid \$143 of the administrative penalty. The remaining amount of \$4,060 shall be payable in 35 monthly payments of \$116 each.</p> <p>Compliance History Classifications: <i>Person/CN – Average</i> <i>Site/RN – Average</i></p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Corrective Actions Taken:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Begin maintaining the Stage II vapor recovery system in proper operating condition including, but not limited to, clearing the blockage in the vapor return line; and Conduct the required annual testing to verify proper operation of the Stage II equipment. Within 45 days, submit written certification demonstrating compliance. |



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

| | | | | | |
|--------------|-----------------|-------------|------------------|------------|----------------|
| DATES | Assigned | 29-Sep-2009 | | | |
| | PCW | 2-Feb-2010 | Screening | 2-Oct-2009 | EPA Due |

| | | | | | |
|--|--|---------------------------|-------|--|--|
| RESPONDENT/FACILITY INFORMATION | | | | | |
| Respondent | BA PROPERTIES MANAGEMENT, INC. dba Sunmart 318 | | | | |
| Reg. Ent. Ref. No. | RN101964542 | | | | |
| Facility/Site Region | 12-Houston | Major/Minor Source | Minor | | |

| | | | | | |
|--------------------------------|------------------------|------------------------------|--------------------|----------|--|
| CASE INFORMATION | | | | | |
| Enf./Case ID No. | 38479 | No. of Violations | 2 | | |
| Docket No. | 2009-1615-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

| | | |
|---|-------------------|---------|
| 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 | \$0 |
|--|-------------------|-----|

| | | | |
|-------------------------|-------------------|-------------------|-----|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|-----|

| | | |
|----------------------------|---------|-----------------------------------|
| Total EB Amounts | \$554 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$1,000 | |

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$3,675 |
|-----------------------------|-----------------------|---------|

| | | | |
|---|-------|-------------------|-------|
| OTHER FACTORS AS JUSTICE MAY REQUIRE | 14.4% | Adjustment | \$528 |
|---|-------|-------------------|-------|

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1. |
|--------------|--|

| | |
|-----------------------------|---------|
| Final Penalty Amount | \$4,203 |
|-----------------------------|---------|

| | | |
|-----------------------------------|-------------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$4,203 |
|-----------------------------------|-------------------------------|---------|

| | | | | |
|-----------------|------|-----------|-------------------|-----|
| DEFERRAL | 0.0% | Reduction | Adjustment | \$0 |
|-----------------|------|-----------|-------------------|-----|

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 | \$4,203 |
|------------------------|---------|

Screening Date 2-Oct-2009

Docket No. 2009-1615-PST-E

PCW

Respondent BA PROPERTIES MANAGEMENT, INC. dba Sunmart 31

Policy Revision 2 (September 2002)

Case ID No. 38479

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101964542

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

| | | | | |
|--------------------------------|---|-------------------|-----------------|---|
| Screening Date | 2-Oct-2009 | Docket No. | 2009-1615-PST-E | PCW |
| Respondent | BA PROPERTIES MANAGEMENT, INC. dba Sunmart 318 | | | <i>Policy Revision 2 (September 2002)</i> |
| Case ID No. | 38479 | | | <i>PCW Revision October 30, 2008</i> |
| Reg. Ent. Reference No. | RN101964542 | | | |
| Media [Statute] | Petroleum Storage Tank | | | |
| Enf. Coordinator | Theresa Hagood | | | |
| Violation Number | 1 | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b) | | | |
| Violation Description | Failed to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual system compliance testing was not successfully completed. | | | |
| Base Penalty | \$10,000 | | | |

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

| | | | | | |
|--|---------------|-------|----------|-------|-------------------|
| | Falsification | Major | Moderate | Minor | |
| | | | | | Percent 0% |

Matrix Notes

Human health or the environment has been exposed to significant amounts pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events: 1 77 Number of violation days

| | | |
|--------------------------------|--------------|---|
| <i>mark only one with an x</i> | daily | |
| | weekly | |
| | monthly | |
| | quarterly | |
| | semiannual | |
| | annual | x |
| | single event | |

Violation Base Penalty \$2,500

One annual event is recommended for the period preceding the September 10, 2009 investigation.

Good Faith Efforts to Comply **0.0%** Reduction \$0

| | | |
|---------------------------|--|-------------------------|
| | Before NOV | NOV to EDPRP/Settlement |
| 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 \$528 **Violation Final Penalty Total** \$3,002

This violation Final Assessed Penalty (adjusted for limits) \$3,002

Economic Benefit Worksheet

Respondent BA PROPERTIES MANAGEMENT, INC. dba Sunmart 318
Case ID No. 38479
Reg. Ent. Reference No. RN101964542
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] | \$500 | 25-Jun-2009 | 10-Sep-2009 | 1.13 | \$28 | \$500 | \$528 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Estimated avoided cost to conduct retesting of the Stage II equipment. The date required is the test due date and the final date is the investigation date when the test failed.

Approx. Cost of Compliance

\$500

TOTAL

\$528

Screening Date 2-Oct-2009 **Docket No.** 2009-1615-PST-E **PCW**
Respondent BA PROPERTIES MANAGEMENT, INC. dba Sunmart 318 *Policy Revision 2 (September 2002)*
Case ID No. 38479 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101964542
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Theresa Hagood

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="10%"/> |
| | Potential | <input type="text"/> | <input checked="" type="text" value="x"/> | <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
mark only one with an x

| | |
|--------------|---|
| daily | <input type="text"/> |
| weekly | <input type="text"/> |
| monthly | <input type="text"/> |
| quarterly | <input checked="" type="text" value="x"/> |
| 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 EDPRP/Settlement Offer |
|---------------|---|-------------------------------|
| 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 BA PROPERTIES MANAGEMENT, INC. dba Sunmart 318
Case ID No. 38479
Reg. Ent. Reference No. RN101964542
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 | \$500 | 10-Sep-2009 | 10-Jun-2010 | 0.75 | \$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) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to clear the blockage in the line. The date required is the investigation date and the 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

\$500

TOTAL

\$26

Compliance History Report

| | | | | |
|---|--|--------------------------------|--------------------------------|-------------------|
| Customer/Respondent/Owner-Operator: | CN603520982 | BA PROPERTIES MANAGEMENT, INC. | Classification: AVERAGE | Rating: 1.50 |
| Regulated Entity: | RN101964542 | Sunmart 318 | Classification: AVERAGE | Site Rating: 1.50 |
| ID Number(s): | AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION | | ACCOUNT NUMBER REGISTRATION | HG7734H 32217 |
| Location: | 3305 DOWLING ST, HOUSTON, TX, 77004 | | | |
| TCEQ Region: | REGION 12 - HOUSTON | | | |
| Date Compliance History Prepared: | September 29, 2009 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | September 29, 2004 to September 29, 2009 | | | |

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

Name: Theresa Hagood Phone: 239 - 2540

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? BA PROPERTIES MANAGEMENT, INC.
4. If Yes, who was/were the prior owner(s)/operator(s)? AB 3305 Dowling Inc.
AB Mobile Corporation
5. When did the change(s) in owner or operator occur? 05/01/2005
01/01/2008
6. Rating Date: 9/1/2009 Repeat Violator: NO

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 | 07/03/2007 | (566133) |
| 2 | 09/28/2009 | (766587) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

| | | |
|-----------------|--|----------|
| Date: | 07/03/2007 | (566133) |
| Self Report? | NO | |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.245(2) | |
| Description: | Tex. Admin. Code Section 115.245 (2)- Failure to verify proper operation of the Stage II equipment at least once every twelve months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101, Determination of Vapor Space Manifolding of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP- 103, Determination of Dynamic Pressure Performance | |
| Classification: | Moderate | |

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
BA PROPERTIES MANAGEMENT,
INC. D/B/A SUMMART 318;
RN101964542**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2009-1615-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding BA PROPERTIES MANAGEMENT, INC. d/b/a Sunmart 318 ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), three underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 3305 Dowling Street in Houston, Harris 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 TCEQ. 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. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Executive Director 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 four thousand two hundred three dollars (\$4,203.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one hundred forty-three dollars (\$143.00) of the administrative penalty. The remaining amount of four thousand sixty dollars (\$4,060.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one hundred sixteen dollars (\$116.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The

subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

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 addressed in this Agreed Order, 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 September 10, 2009, a University of Texas at Arlington investigator documented that Respondent violated:
 - a. 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. Specifically, the Stage II annual system compliance testing was not successfully completed; and
 - b. 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, testing indicated that there was a blockage in the vapor return line.
2. Respondent received notice of the violations on or about October 3, 2009.

III. DENIALS

Respondent generally denies each Allegation in Section II.

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. 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 actions 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: BA PROPERTIES MANAGEMENT, INC. d/b/a Sunmart 318, Docket No. 2009-1615-PST-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
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. Begin maintaining the Stage II vapor recovery system in proper operating condition including, but not limited to, clearing the blockage in the vapor return line, in accordance with 30 TEX. ADMIN. CODE § 115.242 (Allegation 1.b.); and
 - ii. Conduct the required annual testing to verify proper operation of the Stage II equipment, in accordance with 30 TEX. ADMIN. CODE § 115.245 (Allegation 1.a.).
 - b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. and 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and shall 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
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and

Nicole Bealle, Waste Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023-1452

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
5. 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.
6. 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.
7. 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual

signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. Pursuant to 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 this 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.

BA PROPERTIES MANAGEMENT, INC. d/b/a Sunmart 318
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

For the Executive Director

3/16/2011

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 BA PROPERTIES MANAGEMENT, INC. d/b/a Sunmart 318, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

[Handwritten Signature]

Signature

12-1-10

Date

BRAD L. GAZIV

Name (Printed or typed)

DIRECTOR

Title

Authorized representative of

BA PROPERTIES MANAGEMENT, INC. d/b/a Sunmart 318