

**Executive Summary – Enforcement Matter – Case No. 39525
PETROLEUM WHOLESALE, L.P. D/B/A SUNMART 363
RN102039039
Docket No. 2010-0615-PST-E**

Order Type:

Findings Agreed Order

Findings Order Justification:

Respondent has demonstrated a pattern of disregard for environmental laws.

Media:

PST

Small Business:

No

Location(s) Where Violation(s) Occurred:

333 Lutchner Drive, Orange, Orange County

Type of Operation:

underground storage tank system and a convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions:

(1) Docket No. 2008-1170-PST-E (PFD issued May 9, 2011) - same RN as the current action

(2) Docket No. 2011-0571IWD-E - same respondent, RN100205133

Past-Due Penalties: None

Past-Due Fees: None

Other: Stan Floyd, owner of a neighboring property, has sued Respondent for discharge of gasoline/diesel onto his property. The suit is pending in the Orange County District Court, Cause No. B080137-C.

Interested Third-Parties: Stan Floyd

Texas Register Publication Date: May 13, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,200

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$1,200

Total Due to General Revenue: \$4,000

Payment Plan: 4 payments of \$1,000 each

SEP Conditional Offset: N/A

Name of SEP: N/A

Compliance History Classifications:

Person/CN – Average

Site/RN – Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: February 4, 2010
Date(s) of NOV(s): N/A
Date(s) of NOE(s): February 11, 2010

Violation Information

Failed to prevent an unauthorized discharge of gasoline and diesel fuel into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Immediately, cease all unauthorized discharges of regulated substances, including but not limited to gasoline and diesel fuel.
2. Within 30 days, implement corrective action procedures to properly contain storm water that comes in contact with regulated substances deriving from the UST at the Facility to ensure that the storm water is immediately and properly collected and disposed of in an authorized manner.
3. Within 45 days, submit written certification demonstrating compliance.

*Note – remedial corrective actions regarding clean-up, disposal, and a site assessment are addressed in the Proposal for Decision and Order for Docket No. 2008-1170-PST-E.

Litigation Information

Date Petition(s) Filed: July 9, 2010
Date Answer(s) Filed: August 19, 2010
SOAH Referral Date: September 20, 2010
Hearing Date(s):
Preliminary hearing: November 4, 2010 (waived)
Evidentiary hearing: April 12, 2011
Settlement Date: April 7, 2011

Contact Information

TCEQ Attorneys: Phillip Goodwin, P.G., Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Elvia Maske, Waste Enforcement Section, (512) 239-0789

TCEQ Regional Contact: Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838

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

Respondent's Attorney: Stuart W. Lapp, General Counsel, Petroleum Wholesale, L.P., 8550 Technology Forest Place, The Woodlands, Texas 77381



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-Feb-2010			
	PCW	6-Apr-2011	Screening	22-Feb-2010	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Petroleum Wholesale, L.P. dba Sunmart 363				
Reg. Ent. Ref. No.	RN102039039				
Facility/Site Region	10-Beaumont	Major/Minor Source	Major		

CASE INFORMATION					
Enf./Case ID No.	39525	No. of Violations	1		
Docket No.	2010-0615-PST-E	Order Type	Findings		
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	\$5,000
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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	4.0% Enhancement	Subtotals 2, 3, & 7	\$200
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Notes	Enhancement for two prior notices of violations ("NOVs") with dissimilar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$822	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$20,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,200
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$5,200
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,200
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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	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$5,200
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Screening Date 22-Feb-2010

Docket No. 2010-0615-PST-E

PCW

Respondent Petroleum Wholesale, L.P. dba Sunmart 363

Policy Revision 2 (September 2002)

Case ID No. 39525

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102039039

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	2	4%
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) 4%

>> 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 two prior notices of violations ("NOVs") with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date	22-Feb-2010	Docket No.	2010-0615-PST-E	PCW
Respondent	Petroleum Wholesale, L.P. dba Sunmart 363			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39525			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102039039			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Elvia Maske			
Violation Number	1			
Rule Cite(s)	Tex. Water Code § 26.121(a)(1)			
Violation Description	Failed to prevent an unauthorized discharge of gasoline and diesel fuel into or adjacent to water in the state. Specifically, water was being discharged which had a visible sheen of gasoline and diesel. The contaminated water was discharged into a ditch and entered Cedar Lake which flows into the Sabine River and he Sabine Lake.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual		x		Percent <input type="text" value="50%"/>
Potential					

>> Programmatic Matrix

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

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

Adjustment

Violation Events

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="18"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$5,000"/>
	weekly	<input type="text"/>	
	monthly	x	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	

One monthly event is recommended based on documentation of the violation during the February 4, 2010 investigation date to the February 22, 2010 screening date.

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	x	mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	
Violation Subtotal	<input type="text" value="\$5,000"/>	

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

Estimated EB Amount	<input type="text" value="\$822"/>	Violation Final Penalty Total	<input type="text" value="\$5,200"/>
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$5,200"/>	

Economic Benefit Worksheet

Respondent Petroleum Wholesale, L.P. dba Sunmart 363
Case ID No. 39525
Reg. Ent. Reference No. RN102039039
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)	\$20,000	4-Feb-2010	1-Dec-2010	0.82	\$822	n/a	\$822

Notes for DELAYED costs

Es imated cost to cleanup and properly dispose of contaminated soil resulting from the spills. Date Required is the date when the release occurred. 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

\$20,000

TOTAL

\$822

Compliance History Report

Customer/Respondent/Owner-Operator: CN601542616 Petroleum Wholesale, L.P. Classification: AVERAGE Rating: 3.13
Regulated Entity: RN102039039 Sunmart 363 Classification: AVERAGE Site Rating: 3.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 32201
REGISTRATION
Location: 333 LUTCHER DR, ORANGE, TX, 77632
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: February 22, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: February 22, 2005 to February 22, 2010
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: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|---|------------|----------|
| 1 | 04/01/2005 | (350562) |
| 2 | 07/15/2005 | (394541) |
| 3 | 08/11/2006 | (483253) |
| 4 | 11/09/2007 | (487655) |
| 5 | 11/09/2007 | (539912) |
| 6 | 05/06/2008 | (595715) |
| 7 | 08/03/2009 | (764090) |
| 8 | 02/11/2010 | (791680) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/01/2005 (350562)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)

Description: Failure to have the last annual/triennial test available for review. B3

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.246(4)

Description: Failure to maintain proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility. B3

Date: 04/24/2006 (456534)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.10(b)

Description: Failure to have PST records immediately available for inspection upon request by agency personnel.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter A 334.8(c)(5)(A)(ii)

Description: Failure to ensure that a valid TCEQ Delivery Certificate is posted at the facility and visible at all times.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter C 334.48(a)

Description: Failure to ensure that a UST system is operated, maintained, and managed in a manner that will prevent releases of regulated substances from the system.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)

Description: Failure to have line leak detectors tested at least once per year for performance and operational reliability, and properly calibrate and maintain in accordance with the manufacturer's specifications and recommended procedures.

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.
D/B/A SUNMART 363;
RN102039039**

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**BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-0615-PST-E

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 Petroleum Wholesale, L.P. d/b/a Sunmart 363 ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Stuart W. Lapp, General Counsel, Petroleum Wholesale, L.P., presented this Agreed Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 333 Lutchner Drive in Orange, Orange County, Texas (the "Facility"). The USTs at the Facility 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 Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on February 4, 2010, a TCEQ Beaumont Regional Office investigator documented that Respondent failed to prevent an unauthorized discharge of gasoline and diesel fuel into or adjacent to water in the state. Specifically, water which had a visible hydrocarbon sheen was discharged into a ditch which flows into the Sabine River and the Sabine Lake.

3. Respondent received notice of the violation on or about February 16, 2010.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX WATER CODE ch. 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent violated TEX. WATER CODE § 26.121(a)(1), by failing to prevent an unauthorized discharge of gasoline and diesel fuel into or adjacent to water in the state.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of five thousand two hundred dollars (\$5,200.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid one thousand two hundred dollars (\$1,200.00) of the administrative penalty. The remaining amount of four thousand dollars (\$4,000.00) of the administrative penalty shall be payable in four (4) monthly payments of one thousand dollars (\$1,000.00) 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.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 4, above, for violations of state statutes and rules of the TCEQ. 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 matters set forth by this Agreed Order in this action. 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: Petroleum Wholesale, L.P. d/b/a Sunmart 363, Docket No. 2010-0615-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

3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Respondent shall cease all unauthorized discharges of regulated substances, including but not limited to gasoline and diesel fuel;
 - b. Within 30 days after the effective date of this Agreed Order, Respondent shall implement corrective action procedures to properly contain storm water that comes in contact with regulated substances deriving from the UST at the Facility to ensure that the storm water is immediately and properly collected and disposed of in an authorized manner; and
 - c. 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. 3.a. and 3.b. 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:

Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1892

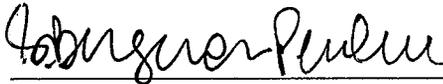
4. All relief not expressly granted in this Agreed Order is denied.
5. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

6. 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.
7. 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.
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. 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.
11. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

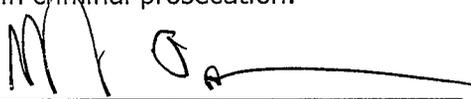
6/10/2011
Date

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 Petroleum Wholesale, L.P. d/b/a Sunmart 363, 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.



Signature – Richard Osburn, Vice President
Petroleum Wholesale, L.P.

4/7/11
Date