

**Order Type:**  
Agreed Order

**Findings Order Justification:**  
N/A

**Media:**  
PST

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
2405 Kelly Street, Houston, Harris County

**Type of Operation:**  
convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** May 27, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$10,686

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$326

**Total Due to General Revenue:** \$10,360

Payment Plan: 35 payments of \$296

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**  
Person/CN – Average  
Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** February 25, 2010  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** March 10, 2010

***Violation Information***

1. Failed to verify proper operation of the Stage II equipment at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to maintain Stage II records at the Station [30 TEX. ADMIN. CODE § 115.246(1) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
3. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and (c)(4) and TEX. WATER CODE § 26.3475(d)].
4. Failed to maintain the required UST records at the Station and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].
5. Failed to monitor the UST for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); failed to provide proper release detection for the pressurized piping associated with the USTs; and failed to test line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2), and (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and (c)(1)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Successfully conducted a Stage II annual compliance test at the Station on February 25, 2010 (violation no. 1).

**Technical Requirements:**

1. Immediately:
  - a. Begin maintaining all Stage II records at the Station; and
  - b. Begin maintaining all UST records at the Station.
2. Within 30 days:
  - a. Begin conducting inspections and testing of the cathodic protection system for the UST system and associated piping; and
  - b. Implement a release detection method for the UST system and piping at the Station.
3. Within 60 days, submit written certification demonstrating compliance.

Docket No. 2010-0449-PST-E

***Litigation Information***

**Date Petition(s) Filed:** July 16, 2010  
**Date(s) Answer(s) Filed:** October 5, 2011  
**SOAH Referral Date:** November 12, 2010  
**Hearing Date(s):**  
Preliminary hearing: February 3, 2011  
Evidentiary hearing: April 28, 2011  
**Settlement Date:** April 28, 2011

***Contact Information***

**TCEQ Attorneys:** Tammy L. Mitchell, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
**TCEQ SEP Coordinator:** N/A  
**TCEQ Enforcement Coordinator:** Keith Frank, Waste Enforcement Section, (512) 239- 1203  
**TCEQ Regional Contact:** Nicole Bealle, Houston Regional Office, (713) 767-3500  
**Respondent:** Badar Sharif, Vice President, BA PROPERTIES MANAGEMENT, INC., 3033 Elgin Street,  
Houston, Texas 77004-3208  
**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	15-Mar-2010			
	<b>PCW</b>	28-Mar-2011	<b>Screening</b>	25-Mar-2010	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart [formerly Sunmart 421]				
<b>Reg. Ent. Ref. No.</b>	RN101922268				
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	39411	<b>No. of Violations</b>	5		
<b>Docket No.</b>	2010-0449-PST-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Keith Frank		
		<b>EC's Team</b>	Enforcement Team 7		
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$10,000	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$9,500
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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.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$475
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<b>Notes</b>	Enhancement due to one previous NOV with same or similar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$625
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$1,425	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,710	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$9,350
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	14.3%	<b>Adjustment</b>	\$1,336
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1, 3 and 5.
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<b>Final Penalty Amount</b>	\$10,686
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$10,686
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$10,686
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Screening Date 25-Mar-2010

Docket No. 2010-0449-PST-E

PCW

Respondent BA PROPERTIES MANAGEMENT, INC. dba Cherry  
Food Mart [formerly Sunmart 421]

Policy Revision 2 (September 2002)

Case ID No. 39411

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101922268

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

### 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 due to one previous NOV with same or similar violations.

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

<b>Screening Date</b>	25-Mar-2010	<b>Docket No.</b>	2010-0449-PST-E	<b>PCW</b>
<b>Respondent</b>	BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart (formerly Sunmart 421)			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	39411			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN101922268			
<b>Media [Statute]</b>	Petroleum Storage Tank			
<b>Enf. Coordinator</b>	Keith Frank			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)			
<b>Violation Description</b>	Failed to verify proper operation of the Stage II equipment at least once every 12 months. Specifically, the Stage II annual compliance testing had not been conducted.			
		<b>Base Penalty</b>	\$10,000	

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	<b>Actual</b>				
	<b>Potential</b>	x			<b>Percent</b> 25%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 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      365 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 12-month period preceding the February 25, 2010 investigation.

**Good Faith Efforts to Comply** 25.0% Reduction \$625

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

**Notes**

The Respondent came into compliance on February 25, 2010 prior to the Notice of Enforcement dated March 10, 2010.

**Violation Subtotal** \$1,875

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

<b>Estimated EB Amount</b>	\$548	<b>Violation Final Penalty Total</b>	\$2,286
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$2,286

## Economic Benefit Worksheet

**Respondent** BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart [formerly Sunmart 421]  
**Case ID No.** 39411  
**Reg. Ent. Reference No.** RN101922268  
**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-Feb-2009	25-Feb-2010	1.92	\$48	\$500	\$548
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for annual testing to verify proper operation of the Stage II equipment. Date Required is one year prior to the investigation. Final Date is the date of compliance.

Approx. Cost of Compliance

\$500

**TOTAL**

\$548

**Screening Date** 25-Mar-2010 **Docket No.** 2010-0449-PST-E **PCW**  
**Respondent** BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart  
**Case ID No.** 39411 *Policy Revision 2 (September 2002)*  
**Reg. Ent. Reference No.** RN101922268 *PCW Revision October 30, 2008*  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>				
	<b>Adjustment</b> <input type="text" value="\$9,000"/>				

**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 EDCRP/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	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>	
<b>Violation Subtotal</b> <input type="text" value="\$1,000"/>		

**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 Cherry Food Mart [formerly Sunmart 421]  
**Case ID No.** 39411  
**Reg. Ent. Reference No.** RN101922268  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	25-Feb-2010	26-May-2010	0.25	\$6	n/a	\$6
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 maintain Stage II records at the Station. Date Required is the investigation date. Final Date is the date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$6

Screening Date 25-Mar-2010

Docket No. 2010-0449-PST-E

PCW

Respondent BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart

Policy Revision 2 (September 2002)

Case ID No. 39411

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101922268

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(2)(C) and (c)(4) and Tex. Water Code § 26.3475(d)

Violation Description Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Also, failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 28

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the February 25, 2010 investigation to the March 25, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Reduction	
	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 \$667

Violation Final Penalty Total \$3,000

This violation Final Assessed Penalty (adjusted for limits) \$3,000

## Economic Benefit Worksheet

**Respondent** BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart [formerly Sunmart 421]  
**Case ID No.** 39411  
**Reg. Ent. Reference No.** RN101922268  
**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

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	1-Aug-2008	25-Feb-2010	2.49	\$62	\$500	\$562
Other (as needed)	\$100	27-Dec-2009	25-Feb-2010	1.08	\$5	\$100	\$105

Notes for AVOIDED costs

Estimated avoided cost for conducting the triennial test (\$500). Date Required is the date of ownership change. Final Date is the investigation date. Estimated cost to conduct bimonthly inspections of the rectifier and other components of the cathodic protection system (\$100). Date Required is 60 days before the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$600

**TOTAL**

\$667

**Screening Date** 25-Mar-2010 **Docket No.** 2010-0449-PST-E **PCW**  
**Respondent** BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart  
**Case ID No.** 39411 *Policy Revision 2 (September 2002)*  
**Reg. Ent. Reference No.** RN101922268 *PCW Revision October 30, 2008*  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.10(b)  
**Violation Description** Failed to maintain the required UST records and make them immediately available for inspection upon request by agency personnel.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 Number of violation days 28

*mark only one with an x*

daily	
weekly	
mon hly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,000

One single event is recommended.

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

	Reduction	
	Before NOV	NOV to EDCRP/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** \$21

**Violation Final Penalty Total** \$1,200

**This violation Final Assessed Penalty (adjusted for limits)** \$1,200

## Economic Benefit Worksheet

**Respondent** BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart [formerly Sunmart 421]  
**Case ID No.** 39411  
**Reg. Ent. Reference No.** RN101922268  
**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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	25-Feb-2010	25-Dec-2010	0.83	\$21	n/a	\$21
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 maintain UST records. 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

\$500

**TOTAL**

\$21

<b>Screening Date</b>	25-Mar-2010	<b>Docket No.</b>	2010-0449-PST-E	<b>PCW</b>	
<b>Respondent</b>	BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart [formerly Sunmart 421]			<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b>	39411			<i>PCW Revision October 30, 2008</i>	
<b>Reg. Ent. Reference No.</b>	RN101922268				
<b>Media [Statute]</b>	Petroleum Storage Tank				
<b>Enf. Coordinator</b>	Keith Frank				
<b>Violation Number</b>	5				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2) and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a) and (c)(1)				
<b>Violation Description</b>	<p>Failed to monitor the UST for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). Failed to provide proper release detection for the pressurized piping associated with the USTs. Specifically, the Respondent did not conduct the annual piping tightness test. Also, failed to test the line leak detectors at least once per year for performance and operational reliability.</p>				
	<b>Base Penalty</b>	\$10,000			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
OR	<b>Release</b>	<b>Harm</b>			
		Major      Moderate      Minor			
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
			<b>Percent</b>	<input type="text" value="25%"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
			<b>Percent</b>	<input type="text" value="0%"/>	
<b>Matrix Notes</b>	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.				
	<b>Adjustment</b>	\$7,500			
		\$2,500			
<b>Violation Events</b>					
	Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="28"/>	Number of violation days	
	<i>mark only one with an x</i>	daily	<input type="text"/>		
		weekly	<input type="text"/>		
		monthly	<input checked="" type="checkbox"/>		
		quarterly	<input type="text"/>		
		semiannual	<input type="text"/>		
		annual	<input type="text"/>		
		single event	<input type="text"/>		
		<b>Violation Base Penalty</b>			<input type="text" value="\$2,500"/>
	One monthly event is recommended based on documentation of the violation during the February 25, 2010 investigation to the March 25, 2010 screening date.				
<b>Good Faith Efforts to Comply</b>					
	<b>0.0%</b> Reduction				
		Before NOV	NOV to EDPRP/Settlement Offer	<input type="text" value="\$0"/>	
	Extraordinary	<input type="text"/>	<input type="text"/>		
	Ordinary	<input type="text"/>	<input type="text"/>		
	N/A	<input checked="" type="checkbox"/>	(mark with x)		
	<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
	<b>Violation Subtotal</b>	\$2,500			
<b>Economic Benefit (EB) for this violation</b>					
	<b>Statutory Limit Test</b>				
	Estimated EB Amount	<input type="text" value="\$183"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$3,000"/>	
	<b>This violation Final Assessed Penalty (adjusted for limits)</b>			<input type="text" value="\$3,000"/>	

## Economic Benefit Worksheet

**Respondent** BA PROPERTIES MANAGEMENT, INC. dba Cherry Food Mart [formerly Sunmart 421]  
**Case ID No.** 39411  
**Reg. Ent. Reference No.** RN101922268  
**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				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	25-Feb-2010	25-Dec-2010	0.83	\$62	n/a	\$62

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs. 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]	\$110	25-Feb-2009	25-Feb-2010	1.92	\$11	\$110	\$121
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for conducting annual piping tightness and line leak detector tests. Date Required is one year prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance

\$1,610

**TOTAL**

\$183

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603560749 BA PROPERTIES MANAGEMENT, INC Classification: AVERAGE Rating: 2.00  
Regulated Entity: RN101922268 Cherry Food Mart Classification: AVERAGE Site Rating: 3.00  
ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER  
PETROLEUM STORAGE TANK REGISTRATION 40311  
REGISTRATION  
Location: 2405 KELLEY ST, HOUSTON, TX, 77026  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: March 25, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: March 25, 2005 to March 25, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Keith Frank Phone: (512) 239-1203

## 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)? Sunmart, Inc.
5. When did the change(s) in owner or operator occur? 08/01/2008
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 | 05/24/2007 | (559966) |
| 2 | 11/14/2007 | (607447) |
| 3 | 03/10/2010 | (794918) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: (559966) CN603560749
- Self Report? NO Classification: Moderate  
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.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)  
Description: 30 Tex. Admin. Code Section 115.242 (3)(G) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including vapor return lines, including such components as swivels, anti- recirculation valves, and underground piping, that malfunction, are blocked, or are restricted.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)  
Description: 30 TAC Chapter 115.242(1)(C) - Failure to install a Stage II Onboard Refueling Vapor Recovery (ORVR) system compatible with Onboard Refueling Vapor Recovery (ORVR) systems on motor vehicles. Existing Stage II systems must be in compliance with this requirement. The current vapor vac system installed at the facility is not ORVR compatible and will need to be upgraded.
- 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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BA PROPERTIES MANAGEMENT,  
INC. DBA CHERRY FOOD MART  
FDDB SUNMART 421;  
RN101922268**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-0449-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. DBA Cherry Food Mart FDDB Sunmart 421 ("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 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), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 2405 Kelly 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. WATER CODE ch. 26, 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 ten thousand six hundred eighty-six dollars (\$10,686.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three hundred twenty-six dollars (\$326.00) of the administrative penalty. The remaining amount of ten thousand three hundred

sixty dollars (\$10,360.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred ninety-six dollars (\$296.00) 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 recognizes that Respondent successfully conducted a Stage II annual compliance test at the Station on February 25, 2010 (Allegation 1.a.).
9. 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.
10. 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.
11. 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 February 25, 2010, a TCEQ Houston Regional Office 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. Specifically, the Stage II annual compliance testing had not been conducted;
  - b. 30 TEX. ADMIN. CODE § 115.246(1) and (6) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain Stage II records at the Station. Specifically, a copy of the correct California Air Resources Board Executive Order for the Stage II vapor recovery system and daily inspection records were not made immediately available for review at the time of the investigation;

- c. 30 TEX. ADMIN. CODE § 334.49(c)(2)(C) and (c)(4) and TEX. WATER CODE § 26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years;
  - d. 30 TEX. ADMIN. CODE § 334.10(b), by failing to maintain the required UST records at the Station and make them immediately available for inspection upon request by agency personnel; and
  - e. 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2), and (b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a) and (c)(1), by failing to monitor the UST system for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); failing to provide proper release detection for the pressurized piping associated with the USTs (specifically, Respondent did not conduct the annual piping tightness test); and failing to test the line leak detectors at least once per year for performance and operational reliability.
2. Respondent received notice of the violations on or about March 15, 2010.

### 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 No. 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. DBA Cherry Food Mart FDBA Sunmart 421, Docket No. 2010-0449-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. Immediately upon the effective date of this Agreed Order, Respondent shall:
    - i. Begin maintaining all Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246 (Allegation 1.b.); and

- ii. Begin maintaining all UST records at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.10 (Allegation 1.d.).
- b. Within 30 days after the effective date of this Agreed Order, Respondent shall:
  - i. Begin conducting the required inspections and testing of the cathodic protection system for the UST system and associated piping, in accordance with 30 TEX. ADMIN. CODE § 334.49 (Allegation 1.c.); and
  - ii. Implement a release detection method for the UST system and piping at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Allegation 1.e.).
- c. Within 60 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. and 2.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

Nicole Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

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. DBA Cherry Food Mart FDBA Sunmart 421  
Docket No. 2010-0449-PST-E  
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

*Bergene R. Rine*

For the Executive Director

6/28/2011

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. DBA Cherry Food Mart FDBA Sunmart 421, 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]*  
Signature

4-28-11  
Date

DEBORAH SKAZIT  
Name (Printed or typed)  
Authorized representative of

Title

BA PROPERTIES MANAGEMENT, INC. DBA Cherry Food Mart FDBA Sunmart 421

CHERRY FOOD MART

2405 KELLY ST.  
HOUSTON, TX 77088

05-10

1101

DATE 4-28-11

68-1485/1110

PAY TO THE ORDER OF

TCEQ

\$ 326.00

*THREE HUNDRED TWENTY SIX AND NO/100*

DOLLARS



UNITED CENTRAL BANK  
8910 HILLCROFT STREET  
HOUSTON, TEXAS 77038  
(800) 787-0765

FOR DOC NO. 2010-0449-PST E

*[Signature]*