

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 43127
SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
RN102839735
Docket No. 2011-2283-PST-E

Order Type:

Default Shutdown Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

3945 Eisenhower Road, San Antonio, Bexar 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: July 20, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$19,734

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$19,734

Compliance History Classifications:

Person/CN – Average
Site/RN – Average by Default

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): August 4, 2011
Complaint Information: The Texas Department of Agriculture notified the TCEQ that they inspected the facility on August 3, 2011, and found the Delivery Certificate was expired.

Date(s) of Investigation: September 19, 2011

Date(s) of NOV(s): N/A

Date(s) of NOE(s): November 21, 2011

Violation Information

1. Failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].
2. Failed to renew the UST delivery certificate and notify the agency of any change or additional information regarding the UST system within 30 days [30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.8(c)(4)(A)(vii), (c)(4)(B), and (c)(5)(B)(ii)].
3. Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].
4. Failed to make available to a common carrier a valid current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [TEX. WATER. CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i)].
5. Failed to provide proper corrosion protection for the UST system [TEX. WATER. CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(2)].
6. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between monitoring); failed to provide proper release detection for the pressurized piping associated with the UST system; failed to conduct reconciliation of inventory control at least once per month in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1% of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurements for regulated substance inputs, withdrawals and the amount still remaining in the tank each operating day [TEX. WATER. CODE § 26.3475(a) and (c)(1), and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I)].
7. Failed to equip the UST system with overflow prevention equipment [TEX. WATER. CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(C)].
8. Failed to inspect at least once every 60 days any sumps, manways, overspill containers, or catchment basins to assure their sides, bottoms, and any penetration points are maintained liquid-tight and free of debris and liquid [30 TEX. ADMIN. CODE § 334.42(i)].
9. Failed to install an emergency shutoff valve (also known as a shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; and failed to install flexible connectors at both ends of each pressurized product line to allow vertical and horizontal movement in the piping [30 TEX. ADMIN. CODE § 334.45(c)(3)(A) and (c)(3)(B)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately shut down operations of all USTs at the :
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances; and
 - e. Temporarily remove the USTs from service.
2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected.
3. The Facility's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ.
5. Within 10 days, Respondent shall surrender the Facility's UST fuel delivery certificate.
6. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1, 4 and 5.
7. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
 - a. Begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel;
 - b. Install and implement a corrosion protection system for the UST system at the Facility;
 - c. Permanently apply or affix tags, labels or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form;
 - d. Install and implement overfill prevention equipment;
 - e. Begin conducting bimonthly inspections of all sumps, manways, and overspill containers or catchment basins;
 - f. Install and implement a release detection method for the USTs at the Facility and begin conducting volume measurement and reconciliation of the inventory control records;
 - g. Install and implement a release detection method for the piping associated with the USTs at the Facility;
 - h. Install and securely anchor shear valves on each pressurized delivery or product line at the base of each dispenser;
 - i. Install flexible connectors at both ends of each pressurized product line;
 - j. Obtain a new fuel delivery certificate.
8. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times.
9. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 7 and 8.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 43127
SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
RN102839735
Docket No. 2011-2283-PST-E

Litigation Information

Date Petition(s) Filed: May 10, 2012
Date Green Card(s) Signed: Unclaimed
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Maggie Dennis, Enforcement Division, (512) 239- 2578
TCEQ Regional Contact: Joel Anderson, San Antonio Regional Office, 210-490-3096
Respondent: Riyaz Ratnani, Director, SUL'Z INTERNATIONAL INC, 3941 Eisenhower Road, San Antonio, Texas 78218
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	21-Nov-2011	Screening	30-Nov-2011	EPA Due	
	PCW	29-Mar-2012				

RESPONDENT/FACILITY INFORMATION						
Respondent	SUL'Z INTERNATIONAL INC dba Sky Top Food Mart					
Reg. Ent. Ref. No.	RN102839735					
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	43127	No. of Violations	9			
Docket No.	2011-2283-PST-E	Order Type	1660			
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Wallace Myers			
		EC's Team	Enforcement Team 7			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000			

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$19,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment for compliance history.
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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	\$778	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$9,118	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$19,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	1.2%	Adjustment	\$234
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance associated with violation nos. 6 and 8.
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Final Penalty Amount	\$19,734
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$19,734
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$19,734
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Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

PCW

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Ma

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 0%

Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

PCW

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Violation Description Failed to maintain all underground storage tank ("UST") records and make them immediately available for inspection upon request by agency personnel.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0.0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 72 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$24

Violation Final Penalty Total \$1,265

This violation Final Assessed Penalty (adjusted for limits) \$1,265

Economic Benefit Worksheet

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
Case ID No. 43127
Req. Ent. Reference No. RN102839735
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
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	19-Sep-2011	29-Aug-2012	0.95	\$24	n/a	\$24
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. The date required is the date of the investigation 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

\$24

Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

PCW

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 334.7(d)(3) and 334.8(c)(4)(A)(vii), (c)(4)(B), and (c)(5)(B)(ii)

Violation Description Failed to renew the UST delivery certificate and notify the agency of any change or additional information regarding the UST system within 30 days. Specifically, the delivery certificate expired on August 31, 2011 and the UST registration was not updated to reflect the current release detection method, piping connector and valve information for the UST system.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 72 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,265

This violation Final Assessed Penalty (adjusted for limits) \$1,265

Economic Benefit Worksheet

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
Case ID No. 43127
Req. Ent. Reference No. RN102839735
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				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	31-Aug-2011	30-Jul-2012	0.92	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to obtain a current TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form. The date required is 30 days after the ownership changed 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

\$100

TOTAL

\$5

Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

PCW

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (5.0%).

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 72 Number of violation days

Table for event frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,265

This violation Final Assessed Penalty (adjusted for limits) \$1,265

Economic Benefit Worksheet

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
Case ID No. 43127
Req. Ent. Reference No. RN102839735
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)	\$100	19-Sep-2011	29-Aug-2012	0.95	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The date required is the date of the investigation 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

\$100

TOTAL

\$5

Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

PCW

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST. Specifically, six fuel deliveries were accepted without a valid delivery certificate.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				3.0%
	Potential			x	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$24,250

\$750

Violation Events

Number of Violation Events 6 Number of violation days 6

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$4,500

Six single events are recommended for accepting six deliveries of fuel without a valid delivery certificate.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$4,554

This violation Final Assessed Penalty (adjusted for limits) \$4,554

Economic Benefit Worksheet

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
Case ID No. 43127
Req. Ent. Reference No. RN102839735
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				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

Economic benefit included in violation no. 2.

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

\$0

TOTAL

\$0

Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

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Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 5

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

Violation Description Failed to provide proper corrosion protection for the UST system. Specifically, corrosion was observed on the submersible pumps, vapor recovery adapter, and pipe cap and the submersible pumps were in contact with the soil.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1 72 Number of violation days

Table for frequency: daily, weekly, monthly, quarterly (marked with x), semiannual, annual, single event.

Violation Base Penalty \$3,750

One quarterly event is recommended based on documentation of the violation during the September 19, 2011 investigation to the November 30, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$397

Violation Final Penalty Total \$3,795

This violation Final Assessed Penalty (adjusted for limits) \$3,795

Economic Benefit Worksheet

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
Case ID No. 43127
Req. Ent. Reference No. RN102839735
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
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No commas or \$

Delayed Costs

Equipment	\$6,000	19-Sep-2011	29-Aug-2012	0.95	\$19	\$378	\$397
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 provide corrosion protection for all components of the UST system. The date required is the date of the investigation 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

\$6,000

TOTAL

\$397

Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

PCW

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii), (d)(1)(B)(iii)(I), and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not put into test mode at least once each month. Failed to provide proper release detection for the pressurized piping associated with the UST system. Specifically, the Respondent had not conducted the annual line leak detector and piping tightness testing. Failed to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1 72 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One quarterly event is recommended based on documentation of the violation during the September 19, 2011 investigation to the November 30, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$200

Violation Final Penalty Total \$3,795

This violation Final Assessed Penalty (adjusted for limits) \$3,795

Economic Benefit Worksheet

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
Case ID No. 43127
Req. Ent. Reference No. RN102839735
Media Petroleum Storage Tank
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	19-Sep-2011	29-Aug-2012	0.95	\$71	n/a	\$71

Notes for DELAYED costs

Estimated cost to provide release detection for the UST system. 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]	\$118	19-Sep-2010	19-Sep-2011	1.92	\$11	\$118	\$129
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the annual line leak detector and piping tightness tests. The date required is one year prior to the investigation and the final date is the investigation date.

Approx. Cost of Compliance

\$1,618

TOTAL

\$200

Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

PCW

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 334.51(b)(2)(C) and Tex. Water Code § 26.3475(c)(2)

Violation Description Failed to equip the UST system with overfill prevention equipment.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5.0%
	Potential		x		

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 72 Number of violation days

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

Violation Base Penalty \$1,250

One quarterly event is recommended based on documentation of the violation during the September 19, 2011 investigation to the November 30, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20

Violation Final Penalty Total \$1,265

This violation Final Assessed Penalty (adjusted for limits) \$1,265

Economic Benefit Worksheet

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
Case ID No. 43127
Req. Ent. Reference No. RN102839735
Media Petroleum Storage Tank
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$300	19-Sep-2011	29-Aug-2012	0.95	\$1	\$19	\$20
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 equip the UST with overfill equipment. 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

\$300

TOTAL

\$20

Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

PCW

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 8

Rule Cite(s) 30 Tex. Admin. Code § 334.42(i)

Violation Description Failed to inspect at least once every 60 days, any sumps, manways, overspill containers or catchment basins, to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of debris and liquid. Specifically, debris was found in the sumps, spill buckets and manways and the spill bucket for the unleaded tank contained liquid.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (5.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

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

Adjustment \$23,750

\$1,250

Violation Events

Table for Violation Events including frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and number of violation days (72).

One quarterly event is recommended based on documentation of the violation during the September 19, 2011 investigation to the November 30, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts to Comply with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer.

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105 Violation Final Penalty Total \$1,265

This violation Final Assessed Penalty (adjusted for limits) \$1,265

Economic Benefit Worksheet

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
Case ID No. 43127
Req. Ent. Reference No. RN102839735
Media Petroleum Storage Tank
Violation No. 8

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]	\$100	21-Jul-2011	19-Sep-2011	1.08	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost of conducting bimonthly inspections of the sumps, manways, overspill containers or catchment basins. The date required is 60 days prior to the investigation and the final date is the investigation date.

Approx. Cost of Compliance \$100

TOTAL \$105

Screening Date 30-Nov-2011

Docket No. 2011-2283-PST-E

PCW

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart

Policy Revision 3 (September 2011)

Case ID No. 43127

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102839735

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 9

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

Violation Description Failed to install an emergency shutoff valve (also known as a shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser. Also, failed to install flexible connectors at both ends of each pressurized product line to allow vertical and horizontal movement in the piping.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (5.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

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

Adjustment \$23,750

\$1,250

Violation Events

Table for Violation Events including frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and duration (1, 72 days).

One quarterly event is recommended based on documentation of the violation during the September 19, 2011 investigation to the November 30, 2011 screening date.

Good Faith Efforts to Comply

Table for Good Faith Efforts to Comply with columns: Reduction (0.0%), Before NOV, NOV to EDPRP/Settlement Offer.

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23 Violation Final Penalty Total \$1,265

This violation Final Assessed Penalty (adjusted for limits) \$1,265

Economic Benefit Worksheet

Respondent SUL'Z INTERNATIONAL INC dba Sky Top Food Mart
Case ID No. 43127
Req. Ent. Reference No. RN102839735
Media Petroleum Storage Tank
Violation No. 9

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$200	19-Sep-2011	29-Aug-2012	0.95	\$1	\$13	\$13
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$200	19-Sep-2011	29-Aug-2012	0.95	\$9	n/a	\$9

Notes for DELAYED costs

Estimated cost to properly install and maintain shear valve anchors (\$200) and install flexible connectors (\$200) at the Facility. The dates required are the date of the investigation and the final dates are 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

\$400

TOTAL

\$23

Compliance History

Customer/Respondent/Owner-Operator: CN603949389 SUL'Z INTERNATIONAL INC Classification: AVERAGE Rating: 3.01
Regulated Entity: RN102839735 Sky Top Food Mart Classification: AVERAGE BY DEFAULT Site Rating: 3.01
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 75275
Location: 3945 EISENHAUER RD, SAN ANTONIO, TX, 78218
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: November 30, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 30, 2006 to November 30, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Wallace Myers Phone: 512-239-6580

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? OWNOPR SUL'Z INTERNATIONAL INC
4. If Yes, who was/were the prior owner(s)/operator(s)?
OWNOPR Electro Sales & Service, Inc.
OWNOPR DIL DIL INC
5. When did the change(s) in owner or operator occur?
02/16/2009 OWNOPR DIL DIL INC
08/01/2011 OWNOPR Electro Sales & Service, Inc.
6. Rating Date: 9/1/2011 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 10/18/2011 (795906)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SUL'Z INTERNATIONAL INC DBA
SKY TOP FOOD MART;
RN102839735**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2011-2283-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty, corrective action of the respondent, and revocation of the facility's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 3945 Eisenhower Road in San Antonio, Bexar County, Texas. The respondent made the subject of this Order is SUL'Z INTERNATIONAL INC d/b/a Sky Top Food Mart ("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), a UST system and a convenience store with retail sales of gasoline located at 3945 Eisenhower Road in San Antonio, Bexar 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.
2. During an investigation conducted on September 19, 2011, a TCEQ San Antonio Regional Office investigator documented that Respondent:
 - a. Failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel;
 - b. Failed to renew the UST delivery certificate and notify the agency of any change or additional information regarding any change or additional information regarding the UST system within 30 days. Specifically, the delivery certificate expired on August 31, 2011, and the UST registration was not updated to reflect the current release detection method, piping connector, and valve information for the UST system;
 - c. Failed to ensure that a legible tag, label or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non removable point in the immediate area of the fill tube according to the UST registration and self-certification form;

- d. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, six fuel deliveries were accepted without a valid delivery certificate;
 - e. Failed to provide proper corrosion protection for the UST system. Specifically, corrosion was observed on the submersible pumps, vapor recovery adaptor and pipe cap, and the submersible pumps were in contact with the soil;
 - f. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring). Specifically, the automatic tank gauge was not put into test mode at least once each month. Failed to provide proper release detection for the pressurized piping associated with the UST system. Specifically, Respondent had not conducted the annual line leak detector and piping tightness testing. Failed to conduct reconciliation of inventory control at least once per month in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurements for regulated substance inputs, withdrawals and the amount still remaining in the tank each operating day;
 - g. Failed to equip the UST system with overfill prevention equipment;
 - h. Failed to inspect at least once every 60 days any sumps, manways, overspill containers, or catchment basins to assure their sides, bottoms, and any penetration points are maintained liquid-tight and free of debris and liquid. Specifically, debris was found in the sumps, spill buckets and manways, and the spill bucket for the unleaded tank contained liquid; and
 - i. Failed to install an emergency shutoff valve (also known as a shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser. Also, failed to install flexible connectors at both ends of each pressurized product line to allow vertical and horizontal movement in the piping.
3. By letter dated November 21, 2011, the TCEQ San Antonio Regional Office provided Respondent with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
 4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of SUL'Z INTERNATIONAL INC d/b/a Sky Top Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on May 10, 2012.
 5. By letter dated May 10, 2012, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

6. More than 20 days have elapsed since Respondent received notice of the EDRP. Respondent failed to file an answer and failed to request a hearing.
7. By letter dated July 3, 2012, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Facility to be shut down and removed from service if Respondent failed to correct the release detection, corrosion protection, spill and/or overfill violations within 30 days after Respondent's receipt of the notice.
8. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection, corrosion protection and spill and/or overfill violations alleged in Findings of Fact Nos. 2.e., 2.f. and 2.g. have been corrected.
9. The USTs at the Facility do not have release detection, corrosion protection, and spill and/or overfill protection as required by 30 TEX. ADMIN. CODE §§ 334.49(a)(2), 334.50(b)(1)(A), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I), and 334.51(b)(2)(C) and may be releasing petroleum products to the environment. Therefore, conditions at the Facility constitute an imminent peril to public health, safety, and welfare.

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.a., Respondent failed to maintain all UST records and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE § 334.10(b);
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to renew the UST delivery certificate and notify the agency of any change or additional information regarding the UST system within 30 days, in violation of 30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.8(c)(4)(A)(vii), (c)(4)(B), and (c)(5)(B)(ii);
4. As evidenced by Finding of No. Fact 2.c., Respondent failed to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C);
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to make available to a common carrier a valid current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of TEX. WATER. CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i);
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to provide proper corrosion protection for the UST system, in violation of TEX. WATER. CODE § 26.3475(d) and 30 TEX. ADMIN. CODE § 334.49(a)(2);
7. As evidenced by Finding of Fact No. 2.f., Respondent failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between monitoring); failed to provide proper release detection for the pressurized piping associated with the UST system; failed to conduct reconciliation of inventory control at least once per month in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1% of the total substance flow-through for the month plus 130 gallons; and failed to record inventory volume measurements for regulated substance inputs, withdrawals and the amount still remaining in the tank each

operating day, in violation of TEX. WATER. CODE § 26.3475(a) and (c)(1), and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I);

8. As evidenced by Finding of Fact No. 2.g., Respondent failed to equip the UST system with overfill prevention equipment, in violation of TEX. WATER. CODE § 26.3475(c)(2) and 30 TEX. ADMIN. CODE § 334.51(b)(2)(C);
9. As evidenced by Finding of Fact No. 2.h., Respondent failed to inspect at least once every 60 days any sumps, manways, overspill containers, or catchment basins to assure their sides, bottoms, and any penetration points are maintained liquid-tight and free of debris and liquid, in violation of 30 TEX. ADMIN. CODE § 334.42(i); and
10. As evidenced by Finding of Fact No. 2.i., Respondent failed to install an emergency shutoff valve (also known as a shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; and failed to install flexible connectors at both ends of each pressurized product line to allow vertical and horizontal movement in the piping, in violation of 30 TEX. ADMIN. CODE § 334.45(c)(3)(A) and (c)(3)(B).
11. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
12. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
13. 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.
14. An administrative penalty in the amount of nineteen thousand seven hundred thirty-four dollars (\$19,734.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
15. As evidenced by Findings of Fact Nos. 2, 3, 7 and 8, Respondent failed to correct documented violations of Commission release detection, corrosion protection, and spill and/or overfill requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the USTs at the Facility.
16. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
17. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

18. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facility's UST fuel delivery certificate if the Commission finds that good cause exists.
19. Good cause for revocation of the Facility's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6 and Conclusions of Law Nos. 2 through 12.
20. As evidenced by Findings of Fact Nos. 8 and 9, current conditions at the Facility constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

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

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. The USTs at the Facility shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provisions Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the violations noted in Findings of Fact Nos. 2.e, 2.f., and 2.g, and Conclusions of Law Nos. 6, 7, and 8 have been corrected.
3. If Respondent elects to permanently remove from service any portion of the UST system at the Facility, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
4. The Facility's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.
5. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8.

6. Within 10 days after the effective date of this Order, Respondent shall send the Facility's UST fuel delivery certificate to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

7. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 13, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e., 5 and 6.

8. Respondent is assessed an administrative penalty in the amount of nineteen thousand seven hundred thirty four dollars (\$19,734.00) 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 Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

9. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: SUL'Z INTERNATIONAL INC dba Sky Top Food Mart; Docket No. 2011-2283-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

10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:

- a. Begin maintaining all UST records and ensure they are made immediately available for inspection upon request by agency personnel, in accordance with 30 TEX. ADMIN. CODE § 334.10(b) (Conclusion of Law No. 2);
- b. Install and implement a corrosion protection system for the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49 (Conclusion of Law No. 6);
- c. Permanently apply or affix tags, labels or markings to the UST fill tubes with an identification number that matches the number listed on the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8 (Conclusion of Law No. 4);
- d. Install and implement overfill prevention equipment, in accordance with 30 TEX. ADMIN. CODE § 334.51 (Conclusion of Law No. 8);
- e. Begin conducting bimonthly inspections of all sumps, manways, and overspill containers or catchment basins, in accordance with TEX. ADMIN. CODE § 334.42 (Conclusion of Law No. 9);

- f. Install and implement a release detection method for the USTs at the Facility and begin conducting volume measurement and reconciliation of the inventory control records, in accordance with TEX. ADMIN. CODE § 334.50 (Conclusion of Law No. 7);
 - g. Install and implement a release detection method for the piping associated with the USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusion of Law No. 7);
 - h. Install and securely anchor shear valves on each pressurized delivery or product line at the base of each dispenser, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusion of Law No. 10); and
 - i. Install flexible connectors at both ends of each pressurized product line, in accordance with 30 TEX. ADMIN. CODE § 334.45 and (Conclusion of Law No. 10); and
 - j. Obtain a new fuel delivery certificate from the TCEQ (Conclusions of Law Nos. 1, 3 and 5).
11. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Facility where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
12. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provisions Nos. 10 and 11.
13. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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 certifications and supporting 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:

Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

14. All relief not expressly granted in this Order is denied.
15. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
16. If Respondent fails to comply with any of the Ordering Provisions in this 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 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.
17. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this 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.
18. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
19. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
20. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JIM SALLANS

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

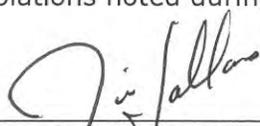
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of SUL'Z INTERNATIONAL INC dba Sky Top Food Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on May 10, 2012.

The EDPRP was mailed to Respondent's last known address on May 10, 2012, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

By letter dated July 3, 2012, sent via first class mail and certified mail, return receipt requested article no. 70022030000570598237, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Facility shut down and removed from service if the violations pertaining to release detection, corrosion protection and spill and/or overflow requirements were not corrected within 30 days of Respondent's receipt of the letter. According to the return receipt "green card," Respondent received the notice on July 5, 2012.

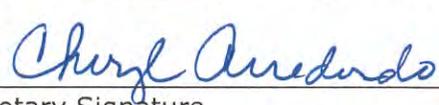
As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the shutdown violations noted during the September 19, 2011, investigation."



Jim Sallans, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 13th day of July, A.D. 2012.



Notary Signature

