

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 43499
Sona Stores, Inc. d/b/a Sunshine Grocery and d/b/a Sunshine Groceries
RN102478468 and RN102789138
Docket No. 2012-0315-PST-E

Order Type:

Default Shutdown Order

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

North side of the intersection of Highway 190 and Farm-to-Market Road 1416, Bon Weir, Newton County (Facility 1); 42338 S. Texas State Highway 87, Deweyville, Newton County (Facility 2)

Type of Operation:

two convenience stores 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 10, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: \$5,133

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$5,133

Compliance History Classifications:

Person/CN – Average (Both Facilities)
Site/RN – Poor (Facility 1); Average by Default (Facility 2)

Major Source: No (Both Facilities)

Statutory Limit Adjustment: None (Both PCWs)

Applicable Penalty Policy: September 2002 (Both PCWs)

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: May 19, 2011; January 6, 2012 (Facility 1);
May 19, 2011; February 1, 2012 (Facility 2)

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

Date(s) of NOE(s): January 6, 2012 (Facility 1); February 1, 2012 (Facility 2)

Violation Information

1. Failed to monitor the USTs at Facility 1 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring [TEX. WATER CODE §26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
2. Failed to monitor the USTs at Facility 2 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [TEX. WATER CODE §26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
3. Failed to provide proper release detection for the piping associated with the UST system at Facility 2 [TEX. WATER CODE §26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. As of January 24, 2012, began monitoring the USTs for releases at Facility No. 1; and
2. As of May 19, 2011, the line leak detectors were tested, with passing results, at Facility No. 2.

Technical Requirements:

1. Immediately shut down operations of all USTs at Facility 2:
 - 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 at Facility 2 shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection violations have been corrected.
3. Both Facility's UST fuel delivery certificates are revoked immediately. Respondent may submit an application for new fuel delivery certificates only after Respondent has complied with all of the requirements contained in the order, including payment of the administrative penalty.
4. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel at each Facility until such time as valid delivery certificates are obtained from the TCEQ.
5. Within 10 days, Respondent shall surrender the Facilities' UST fuel delivery certificates to the TCEQ.
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 at Facility 2:
 - a. Install and implement a release detection method for the USTs; and
 - b. Obtain a new fuel delivery certificate.
8. Upon obtaining new fuel delivery certificates, post the fuel delivery certificates in a location at each Facility where the delivery certificates are clearly visible at all times.
9. Within 10 days of resuming sales of gasoline at Facility 2, submit written certification to demonstrate compliance with Technical Requirements Nos. 7 and 8.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 43499
Sona Stores, Inc. d/b/a Sunshine Grocery and d/b/a Sunshine Groceries
RN102478468 and RN102789138
Docket No. 2012-0315-PST-E

Litigation Information

Date Petition(s) Filed: November 5, 2012

Date Green Card(s) Signed: November 8, 2012

Date Answer(s) Filed: N/A

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Kim Morales, Enforcement Division, (409) 899-8799

TCEQ Regional Contact: Sarah Kirksey, Beaumont Regional Office, (409) 899-8758

Respondent: Karam Ali, President, Sona Stores, Inc., P. O. Box 963, Newton, Texas 75966

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	9-Jan-2012			
	PCW	17-Oct-2012	Screening	2-Feb-2012	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Sona Stores, Inc. dba Sunshine Groceries (Facility 1)			
Reg. Ent. Ref. No.	RN102789138			
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	43499	No. of Violations	1
Docket No.	2012-0315-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Audra Benoit
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$2,500**

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**

Notes: No adjustment for compliance history.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

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

Total EB Amounts: \$68
 Approx. Cost of Compliance: \$2,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$2,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$2,500**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$2,500**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$2,500**

Screening Date	2-Feb-2012	Docket No.	2012-0315-PST-E	PCW
Respondent	Sona Stores, Inc. dba Sunshine Groceries (Facility 1)	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	43499	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN102789138			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Audra Benoit			

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

Screening Date	2-Feb-2012	Docket No.	2012-0315-PST-E	PCW
Respondent	Sona Stores, Inc. dba Sunshine Groceries (Facility 1)			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	43499			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN102789138			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Audra Benoit			

Violation Number

Rule Cite(s)

Violation Description Failed to monitor underground storage tanks ("USTs") for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="25%"/>

>> Programmatic Matrix

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

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One monthly event is recommended from the January 6, 2012 record review date to the January 24, 2012 compliance date.

Good Faith Efforts to Comply

Reduction

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

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Sona Stores, Inc. dba Sunshine Groceries (Facility 1)
Case ID No. 43499
Reg. Ent. Reference No. RN102789138
Media Violation No. 1
Media 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)	\$1,500	19-May-2011	24-Jan-2012	0.68	\$51	n/a	\$51

Notes for DELAYED costs

Estimated costs to provide release detection for the USTs at the Facility. The date required is the investigation date. The 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

\$1,500

TOTAL

\$51



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Feb-2012	Screening	9-Feb-2012	EPA Due	
	PCW	17-Oct-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	Sona Stores, Inc. dba Sunshine Grocery (Facility 2)	
Reg. Ent. Ref. No.	RN102478468	
Facility/Site Region	10-Beaumont	Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No.	43499	No. of Violations	1
Docket No.	2012-0315-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Audra Benoit
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$2,500**

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**

Notes: No adjustment for compliance history.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

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

Total EB Amounts **\$226**
 Approx. Cost of Compliance **\$1,618**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$2,500**

OTHER FACTORS AS JUSTICE MAY REQUIRE **5.3%** **Adjustment** **\$133**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with the violation.

Final Penalty Amount **\$2,633**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$2,633**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$2,633**

Screening Date	9-Feb-2012	Docket No.	2012-0315-PST-E	PCW
Respondent	Sona Stores, Inc. dba Sunshine Grocery (Facility 2)			Policy Revision 2 (September 2002)
Case ID No.	43499			PCW Revision October 30, 2008
Reg. Ent. Reference No.	RN102478468			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Audra Benoit			

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)

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

Adjustment Percentage (Subtotal 3)

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

Adjustment Percentage (Subtotal 7)

>> **Compliance History Summary**

Compliance History Notes

No adjustment for compliance history.

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

Screening Date	9-Feb-2012	Docket No.	2012-0315-PST-E	PCW
Respondent	Sona Stores, Inc. dba Sunshine Grocery (Facility 2)		<i>Policy Revision 2 (September 2002)</i>	
Case ID No.	43499	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN102478468			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Audra Benoit			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

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

OR	Harm				Percent <input type="text" value="25%"/>
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

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

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Sona Stores, Inc. dba Sunshine Grocery (Facility 2)
Case ID No. 43499
Reg. Ent. Reference No. RN102478468
Media Violation No. 1
Media 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)	\$1,500	19-May-2011	9-Aug-2012	1.23	\$92	n/a	\$92

Notes for DELAYED costs

Estimated costs to provide release detection for the USTs at the Facility. The date required is the investigation date. 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)	\$118	19-May-2010	1-Feb-2012	2.62	\$15	\$118	\$133

Notes for AVOIDED costs

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

Approx. Cost of Compliance

\$1,618

TOTAL

\$226

Compliance History Report

CH 2 of 2

Customer/Respondent/Owner-Operator:	CN602731853	Sona Stores, Inc.	Classification: AVERAGE	Rating: 27.00
Regulated Entity:	RN102478468	SUNSHINE GROCERY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	70829
Location:	42338 S TEXAS STATE HIGHWAY 87, DEWEYVILLE, TX, 77614			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	March 08, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 02, 2007 to February 02, 2012			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Audra Benoit		Phone:	(409) 899-8799

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If **YES**, who is the current owner/operator? N/A
4. If **YES**, who was/were the prior owner(s)/operator(s)? N/A
5. If **YES**, when did the change(s) in owner or operator occur? N/A
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 02/01/2012 (921719)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING SONA STORES, INC. D/B/A SUNSHINE GROCERY AND D/B/A SUNSHINE GROCERIES; RN102478468 AND RN102789138	§ § § § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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DEFAULT AND SHUTDOWN ORDER DOCKET NO. 2012-0315-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 facilities' fuel delivery certificates. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shut down and remove from service the underground storage tanks ("USTs") located at 42338 S. Texas State Highway 87 in Deweyville, Newton County, Texas. The respondent made the subject of this Order is Sona Stores, Inc. d/b/a Sunshine Grocery and d/b/a Sunshine Groceries ("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), UST systems and two convenience stores with retail sales of gasoline (collectively referred to as the "Facilities") at the following locations:
 - a. Sunshine Groceries (RN102789138) (Facility ID No. 47370), located on the north side of the intersection of Highway 190 and Farm-to-Market Road 1416 in Bon Wier, Newton County, Texas ("Facility No. 1"); and
 - b. Sunshine Grocery (RN102478468) (Facility ID No. 70829), located at 42338 S. Texas State Highway 87 in Deweyville, Newton County, Texas ("Facility No. 2").

The USTs at the Facilities 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 at Facility No. 1 on May 19, 2011, and a record review conducted on January 6, 2012, a UT Arlington PST investigator documented that Respondent failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

3. During an investigation conducted at Facility No. 2 on May 19, 2011, and a record review conducted on February 1, 2012, a UT Arlington PST investigator documented that Respondent:
 - a. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and
 - b. Failed to provide proper release detection for the piping associated with the UST system. Specifically, the line leak detector tests were not conducted.
4. Respondent received notice of the violation in Finding of Fact No. 2 on or about January 11, 2012.
5. By letter dated February 1, 2012, UT Arlington provided Respondent with notice of the violations at Facility No. 2 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 were not corrected.
6. The Executive Director recognizes that Respondent performed the following corrective measures:
 - a. As of January 24, 2012, began monitoring the USTs for releases at Facility No. 1; and
 - b. As of May 19, 2011, the line leak detectors were tested, with passing results, at Facility No. 2.
7. 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 Sona Stores, Inc. d/b/a Sunshine Grocery and d/b/a Sunshine Groceries" (the "EDPRP") in the TCEQ Chief Clerk's office on November 5, 2012.
8. By letter dated November 5, 2012, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on November 8, 2012, as evidenced by the signature on the card.
9. 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.
10. By letter dated February 8, 2013, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at Facility No. 2 to be shut down and removed from service if Respondent failed to correct the release detection violation within 30 days after Respondent's receipt of the notice.
11. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection violation alleged in Finding of Fact No. 3.a. has been corrected.
12. The USTs at Facility No. 2 do not have release detection as required by TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), and may be releasing petroleum products to the environment. Therefore, conditions at Facility No. 2 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, Respondent failed to monitor the USTs at Facility No. 1 for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring, in violation of TEX. WATER CODE §26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
3. As evidenced by Finding of Fact No. 3.a., Respondent failed to monitor the USTs for releases at Facility No. 2 at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of TEX. WATER CODE §26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A).
4. As evidenced by Finding of Fact No. 3.b., Respondent failed to provide proper release detection for the piping associated with the UST system, in violation of TEX. WATER CODE §26.3475(a) and 30 TEX. ADMIN. CODE § 334.50(b)(2).
5. As evidenced by Findings of Fact Nos. 7 and 8, 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(b)(1) .
6. As evidenced by Finding of Fact No. 9, 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.
7. 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.
8. An administrative penalty in the amount of five thousand one hundred thirty-three dollars (\$5,133.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. As evidenced by Findings of Fact Nos. 3.a., 5, 10, and 11, Respondent failed to correct documented violations of Commission release detection requirements at Facility No. 2 within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the USTs at Facility No 2.
10. 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.
11. 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.
12. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Facilities' UST fuel delivery certificates if the Commission finds that good cause exists.

13. Good cause for revocation of Facility No. 1's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 7 through 9, and Conclusions of Law Nos. 2, 5, and 6.
14. Good cause for revocation of Facility No. 2's fuel delivery certificate exists as justified by Findings of Fact Nos. 3 and 7 through 9, and Conclusions of Law Nos. 3 through 6.
15. As evidenced by Findings of Fact Nos. 11 and 12, current conditions at Facility No. 2 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 Facility No. 2:
 - 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 Facility No. 2 shall remain out of service, pursuant to TEX. WATER CODE § 26.3475(e) 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 release detection violation noted in Conclusion of Law No. 3 has been corrected.
3. If Respondent elects to permanently remove from service any portion of the UST system at Facility No. 2, 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 Facilities' UST fuel delivery certificates are revoked immediately upon the effective date of this Order. Respondent may submit applications for new fuel delivery certificates only after Respondent has complied with all of the requirements set forth in this Order, including payment of the administrative penalty.
5. Immediately upon the effective date of this Order, Respondent shall cease accepting fuel at both Facilities until such time as valid delivery certificates are 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 Facilities' UST fuel delivery certificates 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 five thousand one hundred thirty-three dollars (\$5,133.00) 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: Sona Stores, Inc. d/b/a Sunshine Grocery and d/b/a Sunshine Groceries; Docket No. 2012-0315-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 at Facility No. 2 and resuming retail sales of gasoline at Facility No. 2, Respondent shall undertake the following technical requirements:
 - a. Install and implement a release detection method for the USTs at Facility 2, in accordance with 30 TEX. ADMIN CODE § 334.50; and
 - b. Obtain a new fuel delivery certificate from the TCEQ.
11. Upon obtaining a new fuel delivery certificate for each Facility, Respondent shall post the fuel delivery certificates in a location at the Facilities where the delivery certificates are 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 at Facility No. 2, 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:

Sarah Kirksey, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1830

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 each Facility's 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 STEVEN M. FISHBURN

STATE OF TEXAS

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§

COUNTY OF TRAVIS

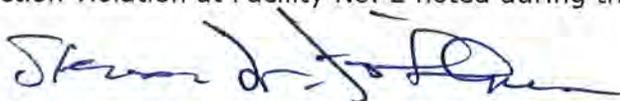
"My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct. On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary 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 Sona Stores, Inc. d/b/a Sunshine Grocery and d/b/a Sunshine Groceries" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 5, 2012.

The EDPRP was mailed to Respondent's last known address on November 5, 2012, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on November 8, 2012, as evidenced by the signature on the card.

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 February 8, 2013, sent via first class mail and certified mail, return receipt requested article no. 70041350000275444602, I provided Respondent with notice of the TCEQ's intent to order the USTs at Facility No. 2 be shut down and removed from service if the violation pertaining to release detection was not corrected within 30 days of Respondent's receipt of the letter. According to the return receipt "green card," Respondent received the notice on February 11, 2013.

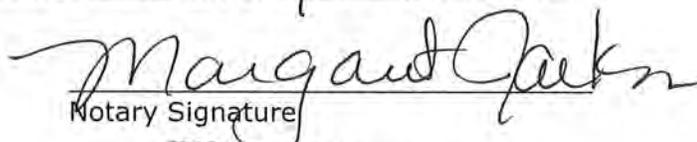
As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the release detection violation at Facility No. 2 noted during the May 19, 2011, investigation."



Steven M. Fishburn, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 11 day of June, A.D. 2013.



Notary Signature

