

**Executive Summary – Enforcement Matter – Case No. 52197**  
**786 K & H LLC dba S Mart**  
**RN102232196**  
**Docket No. 2016-0571-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

S Mart, 203 White Oak Avenue, Omaha, Morris County

**Type of Operation:**

Underground storage tank ("UST") system and a convenience store with retail sales of gasoline and diesel fuel

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** August 5, 2016

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$10,125

**Amount Deferred for Expedited Settlement:** \$2,025

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$8,100

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**Supplemental Environmental Project ("SEP") Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Unsatisfactory

Site/RN - Unsatisfactory

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** April 2014

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** September 25, 2015

**Date(s) of NOE(s):** April 7, 2016

**Executive Summary – Enforcement Matter – Case No. 52197  
786 K & H LLC dba S Mart  
RN102232196  
Docket No. 2016-0571-PST-E**

***Violation Information***

1. Failed to provide corrosion protection for the UST system. Specifically, the Facility's rectifier could not be located. Also, a current cathodic protection survey was not conducted [30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d)].
2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days:
  - i. Install and test a corrosion protection system for the UST system at the Facility; and
  - ii. Implement a release detection method for all USTs at the Facility.
- b. Within 45 days, submit written certification to demonstrate compliance with a.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** James Baldwin, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-1337; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**TCEQ SEP Coordinator:** N/A

**Respondent:** Syed Rizvi, Manager/Owner, S Mart, 6201 Windhaven Parkway, Apartment 1518, Plano, Texas 75093

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

TCEQ

|              |                 |             |                  |             |                |  |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 11-Apr-2016 | <b>Screening</b> | 19-Apr-2016 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 22-Apr-2016 |                  |             |                |  |

|  |                          |                           |       |
|--|--------------------------|---------------------------|-------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                          |                           |       |
| <b>Respondent</b>                      | 786 K & H LLC dba S Mart |                           |       |
| <b>Reg. Ent. Ref. No.</b>              | RN102232196              |                           |       |
| <b>Facility/Site Region</b>            | 5-Tyler                  | <b>Major/Minor Source</b> | Minor |

|  |                        |                              |                    |
|--|------------------------|------------------------------|--------------------|
| <b>CASE INFORMATION</b>                |                        | <b>No. of Violations</b>     | 2                  |
| <b>Enf./Case ID No.</b>                | 52197                  | <b>Order Type</b>            | 1660               |
| <b>Docket No.</b>                      | 2016-0571-PST-E        | <b>Government/Non-Profit</b> | No                 |
| <b>Media Program(s)</b>                | Petroleum Storage Tank | <b>Enf. Coordinator</b>      | James Baldwin      |
| <b>Multi-Media</b>                     |                        | <b>EC's Team</b>             | Enforcement Team 6 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$0                    | <b>Maximum</b>               | \$25,000           |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Adjustment **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts    
 Estimated Cost of Compliance    
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes

**PAYABLE PENALTY**

Screening Date 19-Apr-2016

Docket No. 2016-0571-PST-E

PCW

Respondent 786 K & H LLC dba S Mart

Policy Revision 4 (April 2014)

Case ID No. 52197

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102232196

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Baldwin

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component                     | Number of...   | Number | 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 | 1      | 25%     |
| 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 judgments 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%      |
| 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) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one default order without denial of liability and Unsatisfactory Performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 35%

>> Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 35%

**Screening Date** 19-Apr-2016  
**Respondent** 786 K & H LLC dba S Mart  
**Case ID No.** 52197  
**Reg. Ent. Reference No.** RN102232196  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** James Baldwin  
**Violation Number**

**Docket No.** 2016-0571-PST-E

**PCW**

Policy Revision 4 (April 2014)  
 PCW Revision March 26, 2014

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

| OR | Release   | Harm                           |                      |                      | Percent                            |
|----|-----------|--------------------------------|----------------------|----------------------|------------------------------------|
|    |           | Major                          | Moderate             | Minor                |                                    |
|    | Actual    | <input type="text"/>           | <input type="text"/> | <input type="text"/> | <input type="text" value="15.0%"/> |
|    | Potential | <input type="text" value="x"/> | <input type="text"/> | <input type="text"/> |                                    |

**>> Programmatic Matrix**

| Falsification        | Major                | Moderate             | Minor                | Percent                           |
|----------------------|----------------------|----------------------|----------------------|-----------------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="0.0%"/> |

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events  Number of violation days

|              |                                |
|--------------|--------------------------------|
| 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 NOE/NOV                 | NOE/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"/> | <input type="text"/>              |

**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** 786 K & H LLC dba S Mart  
**Case ID No.** 52197  
**Reg. Ent. Reference No.** RN102232196  
**Media** Petroleum Storage Tank  
**Violation No.** 1

|                         |                              |
|-------------------------|------------------------------|
| <b>Percent Interest</b> | <b>Years of Depreciation</b> |
| 5.0                     | 15                           |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

### Delayed Costs

|                          |         |             |            |      |      |       |       |
|--------------------------|---------|-------------|------------|------|------|-------|-------|
| Equipment                | \$6,000 | 25-Sep-2015 | 6-Jan-2017 | 1.28 | \$26 | \$514 | \$540 |
| 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 install and test a corrosion protection system for the UST system at the Facility. 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

\$6,000

**TOTAL**

\$540

Screening Date 19-Apr-2016  
 Respondent 786 K & H LLC dba S Mart  
 Case ID No. 52197

Docket No. 2016-0571-PST-E

PCW

Policy Revision 4 (April 2014)  
 PCW Revision March 26, 2014

Reg. Ent. Reference No. RN102232196  
 Media [Statute] Petroleum Storage Tank  
 Enf. Coordinator James Baldwin

Violation Number

Rule Cite(s) 30Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to monitor the 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

| Release   | Harm                           |                      |                      | Percent                            |
|-----------|--------------------------------|----------------------|----------------------|------------------------------------|
|           | Major                          | Moderate             | Minor                |                                    |
| Actual    | <input type="text"/>           | <input type="text"/> | <input type="text"/> | <input type="text" value="15.0%"/> |
| Potential | <input type="text" value="x"/> | <input type="text"/> | <input type="text"/> |                                    |

>> Programmatic Matrix

| Falsification        | Major                | Moderate             | Minor                | Percent                           |
|----------------------|----------------------|----------------------|----------------------|-----------------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="0.0%"/> |

Matrix Notes Human health or the environment will or could be exposed to pollutants that 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

|              |                                |
|--------------|--------------------------------|
| 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 April 7, 2016 record review date to the April 19, 2016 screening date.

Good Faith Efforts to Comply

Reduction

|               | Before NOE/NOV                 | NOE/NOV to EDRP/Settlement Offer |
|---------------|--------------------------------|----------------------------------|
| Extraordinary | <input type="text"/>           | <input type="text"/>             |
| Ordinary      | <input type="text"/>           | <input type="text"/>             |
| N/A           | <input type="text" value="X"/> | <input type="text"/>             |

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** 786 K & H LLC dba S Mart  
**Case ID No.** 52197  
**Reg. Ent. Reference No.** RN102232196  
**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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|

**Delayed Costs**

|                          |         |             |            |      |      |     |      |
|--------------------------|---------|-------------|------------|------|------|-----|------|
| Equipment                |         |             |            | 0.00 | \$0  | \$0 | \$0  |
| Buildings                |         |             |            | 0.00 | \$0  | \$0 | \$0  |
| Other (as needed)        |         |             |            | 0.00 | \$0  | \$0 | \$0  |
| Engineering/Construction |         |             |            | 0.00 | \$0  | \$0 | \$0  |
| Land                     |         |             |            | 0.00 | \$0  | n/a | \$0  |
| Record Keeping System    |         |             |            | 0.00 | \$0  | n/a | \$0  |
| Training/Sampling        |         |             |            | 0.00 | \$0  | n/a | \$0  |
| Remediation/Disposal     |         |             |            | 0.00 | \$0  | n/a | \$0  |
| Permit Costs             |         |             |            | 0.00 | \$0  | n/a | \$0  |
| Other (as needed)        | \$1,500 | 25-Sep-2015 | 6-Jan-2017 | 1.28 | \$96 | n/a | \$96 |

Notes for DELAYED costs

Estimated cost to implement a release detection method for all USTs at the Facility. 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

\$1,500

**TOTAL**

\$96

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN604547133, RN102232196, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

**Customer, Respondent, or Owner/Operator:** CN604547133, 786 K & H LLC

**Classification:** UNSATISFACTORY **Rating:** 75.00

**Regulated Entity:** RN102232196, S Mart

**Classification:** UNSATISFACTORY **Rating:** 75.00

**Complexity Points:** 3

**Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 203 White Oak Avenue, Omaha, Morris County, Texas

**TCEQ Region:** REGION 05 - TYLER

**ID Number(s):**

**PETROLEUM STORAGE TANK REGISTRATION**  
REGISTRATION 37180

**Compliance History Period:** September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

**Date Compliance History Report Prepared:** April 18, 2016

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** April 18, 2011 to April 18, 2016

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** James Baldwin

**Phone:** (512) 239-1337

**Site and Owner/Operator History:**

- 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** for #2, who is the current owner/operator? 786 K & H LLC OWNER OPERATOR since 5/14/2012
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)?  
Hafsa Corporation, OWNER OPERATOR, 3/31/2011 to 5/13/2012  
Smith & Coffman, Ltd., OWNER, 5/22/2003 to 3/31/2011  
Smith & Coffman, Ltd., OWNER OPERATOR, 1/9/2001 to 3/30/2011  
GOFORTH, CAROL, OPERATOR, 2/8/2007 to 3/30/2011
- 5) If **YES**, when did the change(s) in owner or operator occur? 5/14/2012

**Components (Multimedia) for the Site Are Listed in Sections A - J**

**A. Final Orders, court judgments, and consent decrees:**

- 1 Effective Date: 12/27/2014 ADMINORDER 2012-2532-PST-E (Findings Order-Default)  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)  
30 TAC Chapter 334, SubChapter C 334.49(a)(1)  
Description: Failed to provide corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on April 17, 2012. Specifically, the rectifier was not functioning.  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)  
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)  
Description: Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days

between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c) (1), as documented during an investigation conducted on April 17, 2012 and a record review conducted on October 30, 2012.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)

30 TAC Chapter 334, SubChapter C 334.50(b)(2)

Description: Failed to provide release detection for the pressurized piping associated with the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2) and TEX. WATER CODE § 26.3475(a), as documented during an investigation conducted on April 17, 2012. Specifically, the Respondent had not conducted the annual piping tightness test.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
786 K & H LLC DBA S MART  
RN102232196

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2016-0571-PST-E

I. JURISDICTION AND STIPULATIONS

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding 786 K & H LLC dba S Mart (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline and diesel fuel located at 203 White Oak Avenue in Omaha, Morris County, Texas (the "Facility"). The UST system at the Facility is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contains or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$10,125 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$8,100 of the penalty and \$2,025 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.

5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. 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.

## **II. ALLEGATIONS**

During an investigation conducted on September 25, 2015 and a record review on April 7, 2016, an investigator documented that the Respondent:

1. Failed to provide corrosion protection for the UST system, in violation of 30 TEX. ADMIN. CODE § 334.49(a)(1) and TEX. WATER CODE § 26.3475(d). Specifically, the Facility's rectifier could not be located. Also, a current cathodic protection survey was not conducted.
2. Failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A) and TEX. WATER CODE § 26.3475(c)(1).

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: 786 K & H LLC dba S Mart, Docket No. 2016-0571-PST-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order:
    - i. Install and test a corrosion protection system for the UST system at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.49; and
    - ii. Implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50.
  - b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i and 2.a.ii. The certification shall be signed by the Respondent 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

3. All relief not expressly granted in this Order is denied.

4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The 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.
5. If the 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, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

|   |                        |
|---|------------------------|
| _____<br>For the Commission   | _____<br>Date          |
| <br>For the Executive Director | <u>9/20/16</u><br>Date |

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

|                    |                      |
|--------------------|----------------------|
| _____<br>Signature | <u>H S H</u><br>Date |
|--------------------|----------------------|

|  |                                 |
|--|---------------------------------|
| <u>SYED H Rizvi</u><br>Name (Printed or typed)           | <u>MANAGER (owner)</u><br>Title |
| Authorized Representative of<br>786 K & H LLC dba S Mart |                                 |

**Instructions:** Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Order.

If mailing address has changed, please check this box and provide the new address below: