

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-0197-PST-E **TCEQ ID:** RN101752947 **CASE NO.:** 28457
RESPONDENT NAME: Arthur M. Gonzalez dba David's Superette

ORDER TYPE:

<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: David's Superette, 8005 John Ralston Road, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on July 10, 2006. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Shontay Wilcher, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-2136; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

Central Office Investigator: Mr. Rob Norris, Financial Administration Division, Revenue Section, MC 184, (512) 239-6239

Respondent: Mr. Arthur M. Gonzalez, Owner, David's Superette, 8012 C.E. King Parkway, Houston, Texas 77044

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: February 23, 2004 and February 16, 2006</p> <p>Dates of NOV/NOE Relating to this Case: February 23, 2004 (NOV), February 17, 2006 (NOE)</p> <p>Background Facts: A Financial Assurance File review was conducted and it was determined that the Respondent did not have the required financial assurance.</p> <p>WASTE</p> <p>Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks ("USTs") [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p>	<p>Total Assessed: \$3,210</p> <p>Total Deferred: \$642 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,568</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the facility was sold as of March 16, 2005.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	21-Feb-2006		
	PCW	23-Feb-2006	Screening	28-Feb-2006
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Arthur M. Gonzalez dba David's Superette
Reg. Ent. Ref. No.	RN101752947
Facility/Site Region	12-Houston
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	28457	No. of Violations	1
Docket No.	2006-0197-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Steven Mahr
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	7% Enhancement	Subtotals 2, 3, & 7	\$210
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Notes Enhancement for one NOV with same or similar violations and one NOV without same or similar violations.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes The respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes The facility changed ownership on 3/16/05.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$2,048	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,950	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,210
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$3,210
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,210
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DEFERRAL	20% Reduction	Adjustment	-\$642
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,568
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Screening Date 28-Feb-2006	Docket No. 2006-0197-PST-E	PCW
Respondent Arthur M. Gonzalez dba David's Superette	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 28457	<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No. RN101752947		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Steven Mahr		

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)			
Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	1	2%
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</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)			7%
>> Repeat Violator (Subtotal 3)			
No		Adjustment Percentage (Subtotal 3)	
			0%
>> Compliance History Person Classification (Subtotal 7)			
Average Performer		Adjustment Percentage (Subtotal 7)	
			0%
>> Compliance History Summary			
Compliance History Notes	Enhancement for one NOV with same or similar violations and one NOV without same or similar violations.		
Total Adjustment Percentage (Subtotals 2, 3, & 7)			7%

Screening Date	28-Feb-2006	Docket No.	2006-0197-PST-E	PCW
Respondent	Arthur M. Gonzalez dba David's Superette		Policy Revision 2 (September 2002)	
Case ID No.	28457	PCW Revision May 19, 2005		
Reg. Ent. Reference No.	RN101752947			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Steven Mahr			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 37.815(a) and (b)			
Secondary Rule Cite(s)				
Violation Description	Failure to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.			
Base Penalty	\$10,000			

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

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

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text"/>
	<input type="text"/>	X	<input type="text"/>	<input type="text"/>	10%

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	X <input type="text"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$2,048"/>	Violation Final Penalty Total <input type="text" value="\$3,210"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,210"/>	

Economic Benefit Worksheet

Respondent: Arthur M. Gonzalez dba David's Superette
 Case ID No.: 28457
 Reg. Ent. Reference No.: RN101752947
 Media [Statute]: 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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Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0
Notes for DELAYED costs							

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$1,950	03-Dec-2002	03-Dec-2003	1.0	\$98	\$1,950	\$2,048
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs							
Estimated cost to provide financial assurance for three petroleum USTs (\$650 per tank) for one year prior to December 3, 2003 request for financial assurance documentation.							

Approx. Cost of Compliance \$1,950

TOTAL \$2,048

Compliance History

Customer/Respondent/Owner-Operator:	CN602805418 Gonz Realty, Inc.	Classification: AVERAGE	Rating: 0.33
Regulated Entity:	RN101752947 DAVID'S SUPERETTE	Classification: AVERAGE	Site Rating: 0.33
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	55032
Location:	8005 JOHN RALSTON RD, HOUSTON, TX, 77044		Rating Date: 9/1/2005 Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	February 27, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 27, 2001 to February 27, 2006		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Steven Mahr Phone: 512-239-6017

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 of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | <u>Gonz Realty, Inc.</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>Gonzalez Arthur M</u> |
| 5. When did the change(s) in ownership occur? | <u>03/16/2005</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | | |
|---|------------|----------|--|
| 1 | 02/17/2006 | (455952) | |
| 2 | 10/30/2002 | (14790) | |
| 3 | 11/13/2002 | (16044) | |
| 4 | 02/23/2004 | (454586) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--|
| Date: | 02/23/2004 | (454586) | |
| Self Report? | NO | | |
| Citation: | 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G] | | |
| Description: | Failure to provide acceptable financial assurance. | | |
| Date: | 10/30/2002 | (14790) | |
| Self Report? | NO | | |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.248(2) | | |
| Description: | No facility representative trained within three month departure of previously trained representative. | | |
- 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
ARTHUR M. GONZALEZ DBA
DAVID'S SUPERETTE
RN101752947

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2006-0197-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Arthur M. Gonzalez dba David's Superette ("Mr. Gonzalez") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Gonzalez appear before the Commission and together stipulate that:

1. Mr. Gonzalez owned a convenience store with retail sales of gasoline at 8005 John Ralston Road in Houston, Harris County, Texas (the "Facility").
2. Mr. Gonzalez's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and Mr. Gonzalez agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Gonzalez is subject to the Commission's jurisdiction.
4. Mr. Gonzalez received notice of the violations alleged in Section II ("Allegations") on or about February 28, 2004 and February 22, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Gonzalez of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Two Hundred Ten Dollars (\$3,210) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Gonzalez has paid Two Thousand Five Hundred Sixty-Eight Dollars (\$2,568) of the administrative penalty and Six Hundred Forty-Two Dollars (\$642) is deferred contingent upon Mr. Gonzalez's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Gonzalez fails to timely

and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Gonzalez to pay all or part of the deferred penalty.

7. 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.
8. The Executive Director of the TCEQ and Mr. Gonzalez have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the facility was sold as of March 16, 2005.
10. 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 Mr. Gonzalez has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner of the Facility, Mr. Gonzalez is alleged to have failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during record reviews conducted on February 23, 2004 and February 16, 2006.

III. DENIALS

Mr. Gonzalez generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Gonzalez pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Mr. Gonzalez's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty

payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Arthur M. Gonzalez dba David's Superette, Docket No. 2006-0197-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Gonzalez.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Gonzalez in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Gonzalez, or three days after the date on which the Commission mails notice of the Order to Mr. Gonzalez, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Arthur M. Gonzalez dba David's Superette
DOCKET NO. 2006-0197-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

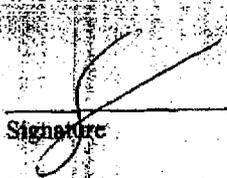

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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


Signature


Date

Arthur M. Gonzalez
Name (Printed or typed)

Permit
Title

Authorized Representative of
Arthur M. Gonzalez dba David's Superette

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

