

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0445-PST-E TCEQ ID: RN100586189 CASE NO.: 35544
RESPONDENT NAME: ARI ARI LTD DBA DESOTO BEVERAGES

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input checked="" type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 901 North I-35 East, Desoto, Dallas County</p> <p>TYPE OF OPERATION: Beverage store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There are no additional pending enforcement actions regarding this Station location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired May 18, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Steven Lopez, Waste Enforcement Section, MC 128, (512) 239-1896 TCEQ Regional Contact: Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903 Respondent: Mr. Blake High, Director, Federal Logistics, Inc., General Partner-Ari Ari Ltd., 2750 Gentle Creek Trail Prosper, Texas 75078 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 20, 2008</p> <p>Date of NOE Relating to this Case: March 6, 2008</p> <p>Background Facts: The EDPRP was filed August 6, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on August 7, 2008. The Notice of Intent ("NOI") to Shutdown the Station was mailed to the Respondent December 11, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. The Respondent received the NOI December 16, 2008, as indicated by the signature on the return receipt "green card." The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent is not yet in compliance. Respondent's delivery certificate expires in May 2010.</p> <p>PST:</p> <p>1. Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>2. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failed to provide release detection by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p>Total Assessed: \$ 19,471</p> <p>Total Deferred: \$ 0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$ 19,471</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately take the following steps to shut down operations of all USTs at the Station: <ol style="list-style-type: none"> Cease dispensing fuel from the USTs; Cease receiving deliveries of regulated substances into the USTs; Padlock the dispensers; Empty the USTs of all regulated substances, and Temporarily remove the USTs from service. Respondent's delivery certificate is revoked immediately. Within 10 days, surrender its UST delivery certificate to the TCEQ. Within 15 days, submit a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 3. If the Respondent elects to permanently remove from service any USTs at the Station: immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days, submit a written report to TCEQ. The USTs shall remain out-of-service until such time as the Respondent demonstrates to the ED that all violations have been corrected. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline: <ol style="list-style-type: none"> Implement a release detection method for all USTs at the Station; Begin conducting proper inventory control procedures for all USTs; Submit an amended registration to reflect the correct owner's authorized representative name and phone number; and Obtain a new delivery certificate from the TCEQ.

<p>3. Failed to verify proper operation of the Stage II Vapor Recovery System at least once every 12 months [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>4. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p>		<p>8. Within 10 days of resuming retail sales of gasoline, submit written certification to demonstrate compliance with Ordering Provision Nos. 7.a. through 8.c.</p> <p>9. Upon obtaining a new delivery certificate, post the delivery certificate in a location where the document is clearly visible at all times.</p>
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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

DATES	Assigned	10-Mar-2008			
	PCW	23-Jan-2009	Screening	13-Mar-2008	EPA Due

RESPONDENT/FACILITY INFORMATION			
Respondent	ARI ARI LTD dba Desoto Beverages		
Reg. Ent. Ref. No.	RN100586189		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	35544	No. of Violations	4
Docket No.	2008-0445-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Steven Lopez
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	<i>Subtotal 1</i>	\$17,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$875
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Notes	Enhancement for one previous NOV with same or similar violations.
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Culpability	No	0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	<i>Subtotal 5</i>	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)
Notes	The Respondent does not meet the good faith criteria.	

Total EB Amounts	\$1,177	0% Enhancement*	<i>Subtotal 6</i>	\$0
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Approx. Cost of Compliance \$3,100 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$18,375
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OTHER FACTORS AS JUSTICE MAY REQUIRE	6%	<i>Adjustment</i>	\$1,096
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 3.
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<i>Final Penalty Amount</i>	\$19,471
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$19,471
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DEFERRAL	0% Reduction	<i>Adjustment</i>	\$0
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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.
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PAYABLE PENALTY	\$19,471
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PCW

Screening Date 13-Mar-2008

Docket No. 2008-0445-PST-E

Respondent ARI ARI LTD dba Desoto Beverages

Policy Revision 2 (September 2002)

Case ID No. 35544

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN100586189

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one previous NOV with same or similar violations.

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

Screening Date 13-Mar-2008 **Docket No.** 2008-0445-PST-E **PCW**
Respondent ARI ARI LTD dba Desoto Beverages *Policy Revision 2 (September 2002)*
Case ID No. 35544 *PCW Revision February 29, 2008*
Reg. Ent. Reference No. RN100586189
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Steven Lopez
Violation Number
Rule Cite(s)
Violation Description Failed to conduct effective manual or automatic inventory control procedures for the UST system.
Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="50%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<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**
mark only one with an x

daily	<input type="text"/>
monthly	<input checked="" type="checkbox"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty
 One monthly event is recommended from the February 20, 2008 investigation date to the March 13, 2008 screening date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$20"/>	Violation Final Penalty Total <input type="text" value="\$5,563"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,563"/>	

Economic Benefit Worksheet

Respondent: ARI ARI LTD dba Desoto Beverages
Case ID No.: 35544
Reg. Ent. Reference No.: RN100586189
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$500	20-Feb-2008	13-Dec-2008	0.8	\$20	n/a	\$20

Notes for DELAYED costs

Estimated cost to conduct inventory control procedures. The Date Required is the date of the investigation. The Final Date is the expected date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$20

Screening Date 13-Mar-2008 **Docket No.** 2008-0445-PST-E **PCW**
Respondent ARI ARI LTD dba Desoto Beverages *Policy Revision 2 (September 2002)*
Case ID No. 35544 *PCW Revision February 29, 2008*
Reg. Ent. Reference No. RN100586189
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Steven Lopez
Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 334.50(d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1).
Violation Description Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Failure to provide release detection by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				50%
Potential	x			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

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

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events: 1 Number of violation days: 22

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

One monthly event is recommended from the February 20, 2008 investigation date to the March 13, 2008 screening date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount: \$61	Violation Final Penalty Total: \$5,563
This violation Final Assessed Penalty (adjusted for limits): \$5,563	

Economic Benefit Worksheet

Respondent: ARI ARI LTD dba Desoto Beverages
Case ID No.: 35544
Reg. Ent. Reference No.: RN100586189
Media: Petroleum Storage Tank
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description: No.commasior.\$						

Delayed Costs

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	\$1,500	20-Feb-2008	13-Dec-2008	0.8	\$61	n/a	\$61

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs. The Date Required is the date of the investigation. The Final Date is the expected date of compliance.

Avoided Costs

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

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$61

Screening Date	13-Mar-2008	Docket No.	2008-0445-PST-E	PCW
Respondent	ARI ARI LTD dba Desoto Beverages			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35544			<i>PCW Revision February 29, 2008</i>
Reg. Ent. Reference No.	RN100586189			
Media [Statute]	Petroleum Storage Tank			
Enf. Coordinator	Steven Lopez			
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to verify proper operation of the Stage II vapor recovery system at least once every 12 months. Specifically, the Stage II annual system compliance testing had not been conducted.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential	x		
				Percent <input type="text" value="50%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					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 <input type="text" value="\$5,000"/>

Violation Events

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="365"/>	Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>		Violation Base Penalty <input type="text" value="\$5,000"/>
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semianual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
One single event is recommended for the 12-month period preceding the February 20, 2008 investigation.				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$1,096"/>	Violation Final Penalty Total <input type="text" value="\$5,563"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,563"/>	

Economic Benefit Worksheet

Respondent: ARI ARI LTD dba Desoto Beverages

Case ID No.: 35544

Reg. Ent. Reference No.: RN100586189

Media: Petroleum Storage Tank

Violation No.: 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$1,000	20-Feb-2007	20-Feb-2008	1.9	\$96	\$1,000	\$1,096
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to verify proper operation of the Stage II equipment. The Date Required is 12 months prior to the investigation date. The Final Date is the date of compliance.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,096

Screening Date 13-Mar-2008 **Docket No.** 2008-0445-PST-E **PCW**
Respondent ARI ARI LTD dba Desoto Beverages *Policy Revision 2 (September 2002)*
Case ID No. 35544 *PCW Revision February 29, 2008*
Reg. Ent. Reference No. RN100586189
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Steven Lopez
Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)
Violation Description Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration did not reflect the name and phone number of the current Station owner's authorized representative.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$2,500

One single event is recommended based on the documentation of the violation during the February 20, 2008 investigation.

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 ARI ARI LTD dba Desoto Beverages

Case ID No. 35544

Reg. Ent. Reference No. RN100586189

Media Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description: No comment for \$						

Delayed Costs

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$0	\$0
Record Keeping System				0.0	\$0	\$0	\$0
Training/Sampling				0.0	\$0	\$0	\$0
Remediation/Disposal				0.0	\$0	\$0	\$0
Permit Costs				0.0	\$0	\$0	\$0
Other (as needed)	\$100	20-Feb-2008	4-Mar-2008	0.0	\$0	\$0	\$0

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. 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)

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN602719064 ARI ARI LTD	Classification: AVERAGE	Rating: 2.08
Regulated Entity:	RN100586189 DESOTO BEVERAGES	Classification: AVERAGE	Site Rating: 2.67
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	17537
Location:	901 N INTERSTATE 35 E, DESOTO, TX, 75115		Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	March 11, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 11, 2003 to March 11, 2008		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Steven Lopez	Phone:	512-239-1896

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? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

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 | (453517) |
| 2 | 03/27/2006 | (460597) |
| 3 | 03/06/2008 | (636165) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|-----------------|----------|
| Date: | 02/17/2006 (453517) | Classification: | Minor |
| Self Report? | NO | | |
| Citation: | 30 TAC Chapter 334, SubChapter A 334.10(b) | | |
| Description: | Failure to have required UST records which are maintained readily accessible and available for inspection upon request by Commission personnel. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.246(7)(A) | | |
| Description: | Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request by authorized representatives of the Texas Commission on Environmental Quality (TCEQ), EPA, or any local air pollution control program. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.245(2) | | |
| Description: | Failure to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101, Vapor Space Manifold, and TXP-103, | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.222(3) | | |

Description: Failure to eliminate any avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance system.

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
ARI ARI LTD DBA DESOTO
BEVERAGES;
RN100586189**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2008-0445-PST-E

At its _____ agenda, 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, TEX. HEALTH & SAFETY CODE ch. 382 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 respondent's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting entry of an Order requiring the respondent, ARI ARI LTD dba Desoto Beverages ("ARI ARI"), to shutdown or remove from service the Underground Storage Tanks ("USTs") at the Desoto Beverages Station, located at 901 North I-35 East, Desoto, Dallas County, Texas.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. ARI ARI owns and operates a beverage store with retail sales of gasoline, located at 901 North I-35 East, Desoto, Dallas County, Texas (the "Station").
2. The USTs at the Station contain regulated substances as defined in the Commission's rules. The USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. On February 20, 2008, an investigator from the TCEQ Dallas Fort Worth Regional Office documented that ARI ARI:

- a. Failed to conduct effective manual or automatic inventory control procedures for the UST system;
 - b. Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failed to provide release detection by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day;
 - c. Failed to verify proper operation of the Stage II vapor recovery system at least once every 12 months; and
 - d. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition.
4. By letter dated March 6, 2008, the TCEQ Dallas Fort Worth Regional Office provided ARI ARI with notice of the violations and the TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, and corrosion protection regulations if the violations were not corrected.
 5. ARI ARI received notice of the violations on or about March 11, 2008.
 6. 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 ARI ARI LTD dba Desoto Beverages" (the "EDPRP") in the TCEQ Chief Clerk's office on August 6, 2008.
 7. By letter dated August 6, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served ARI ARI with notice of the EDPRP. According to the return receipt "green card," ARI ARI received notice of the EDPRP on August 7, 2008, as evidenced by the signature on the card.
 8. More than 20 days have elapsed since ARI ARI received notice of the EDPRP, provided by the Executive Director. ARI ARI failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
 9. By letter dated December 11, 2008, TCEQ provided ARI ARI with notice of TCEQ's intent to order the USTs at the Station shut down and removed from service if ARI ARI failed to

correct the release detection violation within 30 days after ARI ARI's receipt of the notice. According to the return receipt "green card," ARI ARI received the notice on December 16, 2008.

10. As of the date of entry of this Order, ARI ARI has not corrected the violations noted during the February 20, 2008, investigation.
11. The USTs at the Station do not have release detection as required by 30 TEX. ADMIN. CODE § 334.50 and may be releasing petroleum products to the environment without the knowledge of the tank owner or operator. Therefore, conditions at the Station constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, ARI ARI's USTs are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact Number 3.a., ARI ARI violated 30 TEX. ADMIN. CODE § 334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system.
3. As evidenced by Finding of Fact Number 3.b., ARI ARI violated 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failing to provide release detection by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.
4. As evidenced by Finding of Fact Number 3.c., ARI ARI violated 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months.
5. As evidenced by Finding of Fact Number 3.d., ARI ARI violated 30 TEX. ADMIN. CODE § 334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition.

6. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served ARI ARI with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 8, ARI ARI failed to file a timely answer to the EDPRP, 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 ARI ARI and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against ARI ARI for violations of the Texas Water Code and the Texas Health & Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of nineteen thousand four hundred seventy-one dollars (\$19,471.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. As evidenced by Finding of Fact Nos. 3, 4, 5, 9, 10 and 11, ARI ARI failed to correct documented violations of Commission requirements within 30 days after ARI ARI received notice of the violations and notice of the Executive Director's intent to shut down the Station.
11. TEX. WATER CODE § 26.3475(e) authorizes 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 overfill protection for tanks, and/or corrosion protection for tanks and piping.
12. 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.
13. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke ARI ARI's UST delivery certificate if the Commission finds that good cause exists.
14. Good cause for revocation of ARI ARI's UST delivery certificate exists as justified by Findings of Fact Nos. 3 through 11 and Conclusions of Law Nos. 2 through 7 and No. 10.

15. As evidenced by Finding of Fact Number 11, current conditions at the Station 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, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Immediately upon the effective date of this Order, ARI ARI shall take the following steps to shut down operations of all USTs at the Station:
 - 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. ARI ARI's UST delivery certificate is revoked immediately upon the effective date of this Order. ARI ARI may submit an application for a new delivery certificate only after ARI ARI has complied with all of the requirements set forth in these Ordering Provisions.
3. Within 10 days after the effective date of this Order, ARI ARI shall send its UST delivery certificate to:

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

4. Within 15 days after the effective date of this Order, ARI ARI shall submit to the Executive Director a detailed written report documenting the steps it has taken to comply with Ordering Provision Nos. 1.a. through 1.e. and 3. ARI ARI shall submit the report to:

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

and

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

5. If ARI ARI elects to permanently remove from service any USTs at the Station, ARI ARI shall immediately and permanently remove the UST system in accordance with 30 TEX. ADMIN. CODE § 334.55. If ARI ARI permanently removes any portion of the UST system from service, ARI ARI shall, within 15 days after the effective date of this order, submit to the Commission a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55. ARI ARI shall submit the written report to:

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

6. ARI ARI is assessed an administrative penalty in the amount of nineteen thousand four hundred seventy-one dollars (\$19,471.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and ARI ARI's compliance with all the terms and conditions set forth in this Order completely resolve only 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. All

checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: ARI ARI LTD dba Desoto Beverages; Docket No. 2008-0445-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

7. ARI ARI's USTs shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provision Nos. 1.a. through 1.e., until such time as ARI ARI demonstrates to the satisfaction of the Executive Director that it has corrected the violations noted in Finding of Fact Nos. 3.a through 3.d and Conclusion of Law Nos. 2 through 6 as listed herein.
8. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, ARI ARI shall:
 - a. Implement a release detection method for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - b. Begin conducting proper inventory control procedures for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.48;
 - c. Submit an amended registration to reflect the correct owner's authorized representative name and phone number, in accordance with 30 TEX. ADMIN. CODE § 334.7 to:

Registration and Reporting Section
Permitting and Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- d. Obtain a new delivery certificate from the TCEQ.

9. Upon obtaining a new delivery certificate, ARI ARI shall post the delivery certificate in a location where the document is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
10. Within 10 days of resuming retail sales of gasoline, ARI ARI shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 8 and 9. The written certification shall be notarized by a State of Texas Notary Public and 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.”

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

and

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

11. All relief not expressly granted in this Order is denied.
12. The provisions of this Order shall apply to and be binding upon ARI ARI, and ARI ARI is ordered to give notice of this Order to personnel who maintain day to day control of the USTs at the Station.

13. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to ARI ARI if the Executive Director determines that ARI ARI is noncompliant with or in violation of any of the terms and conditions set forth in this Order.
14. This Order shall terminate five years from its effective date or when ARI ARI demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.
15. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

ARI ARI LTD dba Desoto Beverages
TCEQ Docket No. 2008-0445-PST-E
Page 10

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jacquelyn Boutwell. 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 ARI ARI LTD dba Desoto Beverages” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 6, 2008.

The EDPRP was mailed to ARI ARI at its last known address on August 6, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” ARI ARI received notice of the EDPRP on August 7, 2008, as evidenced by the signature on the card.

More than 20 days have elapsed since ARI ARI received notice of the EDPRP. ARI ARI failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

By letter dated December 11, 2008, sent via first class mail and certified mail, return receipt requested article no. 91 7108 2133 3934 8958 4028, I provided ARI ARI with notice of the TCEQ’s intent to order the USTs at the Station shut down and removed from service if the violations pertaining to inventory control records and release detection were not corrected within 30 days of ARI ARI’s receipt of the letter. According to the return receipt “green card,” ARI ARI received the notice on December 16, 2008.

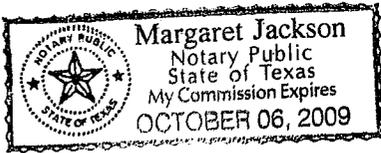
As of the date of this affidavit, I am not aware of any evidence that indicates that ARI ARI has corrected the violations noted during the February 20, 2008, investigation.”

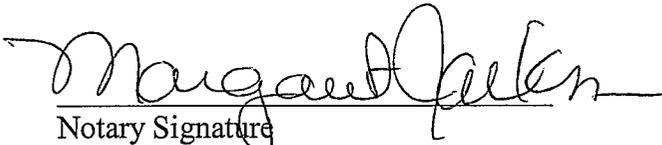


Jacquelyn Boutwell, Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 4 day of February, 2009.




Notary Signature