

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

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input 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 is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on September 6, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675 Lena Roberts, Litigation Division, MC 175, (512) 239-3400 TCEQ Enforcement Coordinator: Brianna Carlson, Waste Enforcement Section, MC R-15, (956) 430-6021 TCEQ Regional Contact: Sam Barrett, Dallas Fort Worth Regional Office, MC R-4, (817) 588-5903 Respondent: Faizal Moosa, General Manager, ARI AIR LTD, 901 North I-35 East, Desoto, Texas 75115 Respondent's Attorney: Matthew C. Meredith, Colven & Tran, P.C., Two Lincoln Centre, 5420 LBJ Freeway, Suite 300, Dallas, Texas 75240</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 on August 6, 2008. Respondent filed and answer and the case was referred to SOAH. The Agreed Order was signed on July 10, 2010..</p> <p>Current Compliance Status: No outstanding technical requirements. Respondent's delivery certificate expires May 31, 2011.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to conduct effective manual or automatic inventory control procedures for the UST system [30 TEX. ADMIN. CODE § 334.48(c)]. 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 334.50(d)(1)(B)(iii)(I), TEX. WATER CODE § 26.3475(c)(1)]. 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)]. 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>Total Assessed: \$19,471</p> <p>Total Deferred: \$ 0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$571/\$18,900</p> <p>Respondent aid \$571 of the administrative penalty. The remaining amount of \$18,900 shall be payable in 35 monthly payments of \$540 each.</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>Corrective Action Taken:</p> <p>Respondent performed the following corrective actions at the Station:</p> <ol style="list-style-type: none"> Submitted documentation verifying that the annual Stage II vapor recovery system test was conducted on February 20, 2008, with passing results; Implemented a release detection method and began properly conducting inventory control procedures as of April 22, 2010; and Submitted an amended registration to reflect the correct owner's authorized representative name and phone number on March 4, 2008.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

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) **Subtotal 1** **\$17,500**

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** **Subtotals 2, 3, & 7** **\$875**

Notes: Enhancement for one previous NOV with same or similar violations.

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

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$0**

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

Notes: The Respondent does not meet the good faith criteria.

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

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$18,375**

OTHER FACTORS AS JUSTICE MAY REQUIRE **6%** **Adjustment** **\$1,096**

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.

Final Penalty Amount **\$19,471**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$19,471**

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

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$19,471**

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

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

Adjustment Percentage (Subtotal 2) 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 1

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				50%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				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 22 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

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 \$20

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. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$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)

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	Major	Moderate	Minor	Percent
				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 22 Number of violation days

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

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)	\$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)

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

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 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	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				50%
	Potential	x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					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 1 365 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$5,000

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 \$1,096

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. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$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]				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

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

22 Number of violation days

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an 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 \$0

Violation Final Penalty Total \$2,782

This violation Final Assessed Penalty (adjusted for limits) \$2,782

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

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)	\$100	20-Feb-2008	4-Mar-2008	0.0	\$0	n/a	\$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)

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

30 TAC Chapter 115, SubChapter C 115.242(4)

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**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-0445-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding ARI ARI LTD dba Desoto Beverages (“ARI ARI”) under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and ARI ARI, represented by Matthew C. Meredith of the law firm of Colven & Tran, P.C., appear before the Commission and together stipulate that:

1. ARI ARI owns and operates four underground storage tanks (“USTs”) and a beverage store with retail sales of gasoline located at 901 North I-35 East, Desoto, Dallas County, Texas (the “Station”). The USTs at the Station are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contain a regulated petroleum substance as defined in the rules of the TCEQ. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and TCEQ rules.
3. The Commission and ARI ARI agree that the Commission has jurisdiction to enter this Agreed Order, and that ARI ARI is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by ARI ARI of any violation alleged in Section II (“Allegations”), nor of any statute or rule.

5. An administrative penalty in the amount of nineteen thousand four hundred seventy-one dollars (\$19,471.00) is assessed by the Commission in settlement of the violations alleged in Section II. ARI ARI paid five hundred seventy-one dollars (\$571.00) of the administrative penalty. The remaining amount of eighteen thousand nine hundred dollars (\$18,900.00) of the administrative penalty shall be payable in 35 monthly payments of five hundred forty dollars (\$540.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If ARI ARI fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, ARI ARI's failure to meet the payment schedule of this Agreed Order constitutes the failure by ARI ARI to timely and satisfactorily comply with all of the terms of this Agreed Order.
6. 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.
7. The Executive Director of the TCEQ and ARI ARI agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that ARI ARI:
 - i. Submitted documentation verifying that the annual Stage II vapor recovery system test was conducted on February 20, 2008 with passing results;
 - ii. Implemented a release detection method and began properly conducting inventory control procedures as of April 22, 2010; and
 - iii. Submitted an amended registration to reflect the correct owner's authorized representative name and phone number on March 4, 2008.
9. 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 ARI ARI has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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

1. During an investigation conducted on February 20, 2008, a TCEQ Dallas / Fort Worth Regional Office investigator documented that ARI ARI violated:
 - a. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for the UST system.
 - b. 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 by 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.
 - c. TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.245(2) by failing 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.
 - d. 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. Specifically, the registration did not reflect the name and phone number of the current Station owner's authorized representative.
2. ARI ARI received notice of the violations on or about March 11, 2008.

III. DENIALS

ARI ARI generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that ARI ARI pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and ARI ARI'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" 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

2. All relief not expressly granted in this Agreed Order is denied.
3. The provisions of this Agreed Order shall apply to and be binding upon ARI ARI. ARI ARI is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If ARI ARI fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, ARI ARI's failure to comply is not a violation of this Agreed Order. ARI ARI shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. ARI ARI shall notify the Executive Director within seven days after ARI ARI becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by ARI ARI shall be made in writing to the Executive Director. Extensions are not effective until ARI ARI receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against ARI ARI 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.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed 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 Agreed 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.

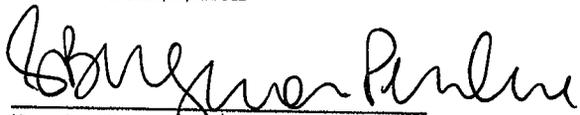
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to ARI ARI, or three days after the date on which the Commission mails notice of this Agreed Order to ARI ARI, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

ARI ARI LTD dba Desoto Beverages
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

8/13/2010

Date

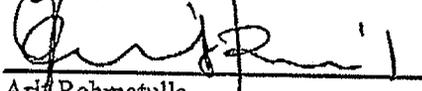
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, 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 ARI ARI's compliance history;
- Greater scrutiny of any permit applications submitted by ARI ARI;
- 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 ARI ARI;
- Automatic referral to the Attorney General's Office of any future enforcement actions against ARI ARI; and
- TCEQ seeking other relief as authorized by law.

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

Signature



Arif Rehmatulla

Authorized representative of
ARI ARI LTD dba Desoto Beverages

7/10/10

Date

GENERAL PARTNER

Title