

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-1479-PST-E RN102376639 CASE NO. 38305**  
**RESPONDENT NAME: DIXIE IN INC. DBA DIXIE DRIVE IN**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

**SITE WHERE VIOLATIONS OCCURRED:** 6846 Dixie Drive, 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 Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired September 6, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney:** Mr. Marshall Coover, Litigation Division, MC 175, (512) 239-0620  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Mr. Rajesh Acharya, Waste Enforcement Section, MC 128, (512) 239-0577  
**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623  
**Respondent:** Mr. Mazen Ali, President, Dixie Drive In, 6846 Dixie Drive, Houston, Texas 77087  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 12, 2009</p> <p><b>Date of NOE Relating to this Case:</b> August 20, 2009</p> <p><b>Background Facts:</b> The EDRP was filed on January 15, 2010. Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on June 28, 2010.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements. Respondent's delivery certificate expires May 2011.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to conduct daily and monthly inspections of the Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.244(1) and (3) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to maintain all required Stage II records at the Station and make them immediately available for review upon request by agency personnel. [30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to upgrade the Stage II vapor recovery system to onboard refueling vapor recovery ("ORVR") compatible systems [30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> </ol>	<p><b>Total Assessed:</b> \$6,631</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$331/\$6,300</p> <p>Respondent paid \$331 of the administrative penalty. The remaining amount of \$6,300 shall be payable in 35 monthly payments of \$180 each.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that Respondent conducted the required annual and triennial testing of the Stage II equipment with passing results.</p> <p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately, begin maintaining all Stage II records at the Station.</li> <li>Within 30 days:             <ol style="list-style-type: none"> <li>Begin conducting daily and monthly inspections of the Stage II vapor recovery system; and</li> <li>Begin maintaining the Stage II vapor recovery system in proper operating condition, including but not limited to upgrading the Stage II equipment to ORVR compatible systems.</li> </ol> </li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	31-Aug-2009			
	<b>PCW</b>	23-Dec-2009	<b>Screening</b>	1-Sep-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	DIXIE IN INC. dba Dixie Drive In				
<b>Reg. Ent. Ref. No.</b>	RN102376639				
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	38305	<b>No. of Violations</b>	4		
<b>Docket No.</b>	2009-1479-PST-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Rajesh Acharya		
		<b>EC's Team</b>	Enforcement Team 6		
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$5,500</b>
---	-------------------	----------------

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

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

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$275</b>
---------------------------	------------------	--------------------------------	--------------

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

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
--------------------	----	------------------	-------------------	------------

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
--	-------------------	------------

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
-------------------------	-------------------	-------------------	------------

Total EB Amounts	\$972
Approx. Cost of Compliance	\$3,800

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$5,775</b>
-----------------------------	-----------------------	----------------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	14.8%	<b>Adjustment</b>	<b>\$856</b>
---	-------	-------------------	--------------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation nos. 1 and 3.

**Final Penalty Amount** **\$6,631**

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$6,631</b>
-----------------------------------	-------------------------------	----------------

<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
-----------------	----------------	-------------------	------------

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.

<b>PAYABLE PENALTY</b>	<b>\$6,631</b>
------------------------	----------------

Screening Date 1-Sep-2009

Docket No. 2009-1479-PST-E

PCW

Respondent DIXIE IN INC. dba Dixie Drive In

Policy Revision 2 (September 2002)

Case ID No. 38305

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102376639

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rajesh Acharya

### 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 NOV with same or similar violations.

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

**Screening Date** 1-Sep-2009 **Docket No.** 2009-1479-PST-E **PCW**  
**Respondent** DIXIE IN INC. dba Dixie Drive In *Policy Revision 2 (September 2002)*  
**Case ID No.** 38305 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102376639  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

**>> Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

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

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

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

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** DIXIE IN INC. dba Dixie Drive In  
**Case ID No.** 38305  
**Reg. Ent. Reference No.** RN102376639  
**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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$350	12-Jul-2009	12-Aug-2009	1.00	\$18	\$350	\$368
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the required inspections of the components of the Stage II vapor recovery system. Date Required is one month prior to the investigation date. Final Date is the investigation date.

Approx. Cost of Compliance \$350

**TOTAL** \$368

**Screening Date** 1-Sep-2009 **Docket No.** 2009-1479-PST-E **PCW**  
**Respondent** DIXIE IN INC. dba Dixie Drive In *Policy Revision 2 (September 2002)*  
**Case ID No.** 38305 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102376639  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 115.246(1) and Tex. Health & Safety Code § 382.085(b)

**Violation Description** Failed to maintain all required Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, a copy of the California Air Resources Board Executive Order was not available.

**Base Penalty** \$10,000

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

OR	<b>Harm</b>			Percent	
	Release	Major	Moderate		Minor
	Actual				
Potential				0%	

**>> Programmatic Matrix**

		Falsification	Major	Moderate	Minor	Percent
			x			

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 20 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,000

One single event is recommended based on documentation of the violation during the August 12, 2009 investigation.

**Good Faith Efforts to Comply** 0.0% Reduction \$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 for this violation.

**Violation Subtotal** \$1,000

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$15 **Violation Final Penalty Total** \$1,206

**This violation Final Assessed Penalty (adjusted for limits)** \$1,206

## Economic Benefit Worksheet

**Respondent** DIXIE IN INC. dba Dixie Drive In  
**Case ID No.** 38305  
**Reg. Ent. Reference No.** RN102376639  
**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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	12-Aug-2009	12-Mar-2010	0.58	\$15	n/a	\$15
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain Stage II records at the Station. Date Required is the investigation date. Final Date is the estimated date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$15

**Screening Date** 1-Sep-2009 **Docket No.** 2009-1479-PST-E **PCW**  
**Respondent** DIXIE IN INC. dba Dixie Drive In *Policy Revision 2 (September 2002)*  
**Case ID No.** 38305 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102376639  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**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 equipment at least once every 12 months and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, Stage II annual system compliance testing had not been conducted by the test due date of January 17, 2007. Specifically, Stage II triennial system compliance testing had not been conducted by the test due date of January 17, 2009..

**Base Penalty** \$10,000

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

OR	<b>Harm</b>			Percent
	Major	Moderate	Minor	
	Actual	Potential	Potential	
	x			25%

**>> 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** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 1095 Number of violation days

- mark only one with an x
- daily
  - weekly
  - monthly
  - quarterly
  - semiannual
  - annual
  - single event

**Violation Base Penalty** \$2,500

One single event is recommended for the three year period preceding the August 12, 2009 investigation.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

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

**Notes**  
 The Respondent came into compliance after the initial settlement offer.

**Violation Subtotal** \$2,500

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

Estimated EB Amount \$488 Violation Final Penalty Total \$3,014

**This violation Final Assessed Penalty (adjusted for limits)** \$3,014

## Economic Benefit Worksheet

**Respondent** DIXIE IN INC. dba Dixie Drive In  
**Case ID No.** 38305  
**Reg. Ent. Reference No.** RN102376639  
**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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$450	17-Jan-2009	23-Oct-2009	1.68	\$38	\$450	\$488
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the required testing. Date Required is the test due date. Final Date is the compliance date.

Approx. Cost of Compliance \$450

**TOTAL** \$488

**Screening Date** 1-Sep-2009 **Docket No.** 2009-1479-PST-E **PCW**  
**Respondent** DIXIE IN INC. dba Dixie Drive In *Policy Revision 2 (September 2002)*  
**Case ID No.** 38305 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102376639  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Rajesh Acharya

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 115.242(1)(C) and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to upgrade the Stage II vapor recovery system to onboard refueling vapor recovery ("ORVR") compatible systems.

**Base Penalty** \$10,000

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

OR	<b>Harm</b>			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential		x		10%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent

**Matrix Notes** Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 20 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,000

One quarterly event is recommended based on documentation of the violation during the August 12, 2009 investigation to the September 1, 2009 screening date.

**Good Faith Efforts to Comply** 0.0% Reduction \$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 for this violation.

**Violation Subtotal** \$1,000

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$102 **Violation Final Penalty Total** \$1,206

**This violation Final Assessed Penalty (adjusted for limits)** \$1,206

## Economic Benefit Worksheet

**Respondent** DIXIE IN INC. dba Dixie Drive In  
**Case ID No.** 38305  
**Reg. Ent. Reference No.** RN102376639  
**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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$2,500	12-Aug-2009	12-Mar-2010	0.58	\$5	\$97	\$102
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to upgrade the Stage II equipment to ORVR compatible systems. Date Required is the investigation date. Final Date is the estimated compliance date.

### 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

**TOTAL**

\$102

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN601241979 DIXIE IN INC.	Classification: AVERAGE	Rating: 4.67
Regulated Entity:	RN102376639 Dixie Drive In	Classification: AVERAGE	Site Rating: 4.67
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	11675
Location:	6846 DIXIE DR, HOUSTON, TX, 77087		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	August 28, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	August 28, 2004 to August 28, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Rajesh Acharya	Phone:	(512) 239-0577

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

### 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.)
 

N/A	1	01/14/2007	(536256)
	2	06/01/2007	(561831)
	3	08/20/2009	(766189)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	01/14/2007	(536256)
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.244(1)	
Description:	Tex. Admin. Code Section 115.244 (1) - Failure to conduct daily inspections of the Stage vapor recovery system for the defects specified in §115.242(3)(A) - (F), (H), and (K). ***** Mr. Ali was unaware of the requirements to perform daily inspections on the vapor recovery equipment.	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 115, SubChapter C 115.244(3)	
Description:	Tex. Admin. Code Section 115.244 (3) - Failure to conduct monthly inspections of the components listed in §115.242(3)(J) of this title. ***** Mr Ali was unaware of the requirements for monthly inspections.	
Self Report?	NO	Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.248(1)  
Description: 30 Tex. Admin. Code Section 115.248(1)- Failure to ensure at least one facility representative receive training and instruction in the operation and maintenance of the Stage II vapor recovery system by successfully completing a training course approved by the executive director. Successful completion shall constitute c

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)  
Description: 30 Tex. Admin. Code Section 115.246(3)- Failure to maintain a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service. the date of repair or replacement, the replacement part manufacturer's information, a g

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)  
Description: 30 Tex. Admin Code Section 115.246 (1)- Failure to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system and any related components installed at the facility.  
\*\*\*\*\* Mr. Ali was unaware of the requirement to keep a copy of the CARB Executive Order on site

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)  
Description: 30 Tex. Admin. Code Section 115.242 (3)(G) - Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s), and free of defects that would impair the effectiveness of the system, including vapor return lines, includin

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  
DIXIE IN INC. DBA DIXIE  
DRIVE IN;  
RN102376639**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-1479-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding DIXIE IN INC. dba Dixie Drive In ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates three underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 6846 Dixie Drive, Houston, Harris County, Texas (the "Station"). Respondent's USTs 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. HEALTH & SAFETY CODE ch. 382 and TCEQ rules.
3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent 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 Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of six thousand six hundred thirty-one dollars (\$6,631.00) is assessed by the Commission in settlement of the violations

alleged in Section II ("Allegations"). Respondent paid three hundred thirty-one dollars (\$331.00) of the administrative penalty. The remaining amount of six thousand three-hundred dollars (\$6,300.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred eighty dollars (\$180.00) 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 Respondent 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent 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 Respondent agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondent conducted the required annual and triennial testing of the Stage II equipment with passing results.
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 Respondent 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 August 12, 2009, a TCEQ Houston Regional investigator documented that Respondent violated:

- a. 30 TEX. ADMIN. CODE § 115.244(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system;
  - b. 30 TEX. ADMIN. CODE § 115.246(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain all required Stage II records at the Station and make them immediately available for review upon request by agency personnel. Specifically, a copy of the California Air Resources Board Executive Order was not available;
  - c. 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 equipment at least once every 12 months and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, Stage II annual system compliance testing had not been conducted by the test due date of January 17, 2007. Stage II triennial system compliance testing had not been conducted by the test due date of January 17, 2009; and,
  - d. 30 TEX. ADMIN. CODE § 115.242(1)(C) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to upgrade the Stage II vapor recovery system to onboard refueling vapor recovery ("ORVR") compatible systems.
2. Respondent received notice of the violations on or about August 25, 2009.

### **III. DENIALS**

1. Respondent generally denies each Allegation in Section II.

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this 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: DIXIE IN INC. dba Dixie Drive In, Docket No. 2009-1479-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. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Respondent shall begin maintaining all Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246.
  - b. Within 30 days after the effective date of this Agreed Order, Respondent shall:
    - i. Begin conducting daily and monthly inspections of the Stage II vapor recovery system, in accordance with 30 TEX. ADMIN. CODE § 115.244; and,
    - ii. Begin maintaining the Stage II vapor recovery system in proper operating condition, including but not limited to upgrading the Stage II equipment to ORVR compatible systems, in accordance with 30 TEX. ADMIN. CODE § 115.242.
  - c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.ii. The 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Nicole Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

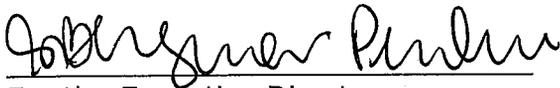
3. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If Respondent fails to comply with any of the Ordering 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Respondent 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 multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

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 Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
For the Executive Director

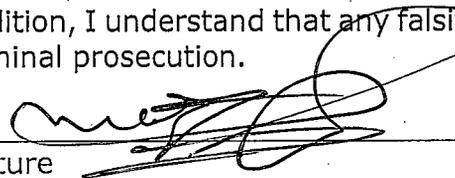
8/27/2010  
Date

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 failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount, may result in:

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

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

  
Signature

6-28-10  
Date

MAZEN ALI  
Name (Printed or typed)  
Authorized representative of  
DIXIE IN INC. dba Dixie Drive In

President  
Title