

Executive Summary – Enforcement Matter – Case No. 40921  
DESI GROUP, INC. DBA Fina Mart  
RN102361060  
Docket No. 2011-0005-PST-E

**Order Type:**

Default Order (SOAH preliminary hearing)

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

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

1612 E. Main Street, Grand Prairie, Dallas County

**Type of Operation:**

convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** September 16, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$44,085

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

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

**Total Due to General Revenue:** \$44,085

**Compliance History Classifications:**

Person/CN – Poor  
Site/RN – Poor

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** November 16, 2010  
**Date(s) of NOV(s):** September 23, 2010  
**Date(s) of NOE(s):** December 13, 2010

***Violation Information***

1. Failed to maintain Stage II records at the Station [30 TEX. ADMIN. CODE § 115.246(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order, and free of defects that would impair the effectiveness of the system [30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
3. Failed to post operating instructions on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system [30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
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)].
5. Failed to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid and debris [30 TEX. ADMIN. CODE § 334.42(i)].
6. Failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE § 334.54(b)(2)].
7. Failed to ensure that all release detection equipment installed as part of a UST system is maintained in good operating condition [30 TEX. ADMIN. CODE § 334.48(e) and TEX. WATER CODE § 26.3475(a)].
8. Failed to ensure that a licensed UST on-site supervisor was present at the Station during construction activities on the UST system [30 TEX. ADMIN. CODE § 334.52(a)(2)].
9. Failed to obtain detailed written records of the repairs made to the UST system, and failed to maintain adequate records to demonstrate compliance with UST repair requirements [30 TEX. ADMIN. CODE § 334.52(a)(4) and (d)(2)].
10. Failed to submit a written notification to the TCEQ at least 30 days prior to initiating a major UST construction activity, and failed to notify the Dallas/Fort Worth regional office between 24 and 72 hours prior to the scheduled time of initiation of a major UST construction activity [30 TEX. ADMIN. CODE § 334.6(b)(2) and (b)(2)(C)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

1. Repaired the corroded automatic tank gauge riser on the regular unleaded tank and repaired the faulty vacuum assist motors for dispenser nos. 3 through 8, as of November 29, 2010 (Violation 2);
2. Posted operating instructions on the front of each pump equipped with a Stage II vapor recovery system, as of March 8, 2011 (Violation 3);

**Executive Summary – Enforcement Matter – Case No. 40921**  
**DESI GROUP, INC. DBA Fina Mart**  
**RN102361060**  
**Docket No. 2011-0005-PST-E**

3. Updated the UST registration to reflect the correct operational status of tank no. 3, as of November 18, 2010 (Violation 4);
4. Inspected and removed liquid and debris from overfill containers, as of November 22, 2010 (Violation 5);
5. Secured tank no. 3 to prevent unauthorized access, as of November 19, 2010 (Violation 6); and
6. Repaired the diesel line leak detectors, as of November 29, 2010 (Violation 7).

**Technical Requirements:**

1. Respondent's UST fuel delivery certificate is revoked immediately. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
2. Within 10 days, Respondent shall surrender its UST fuel delivery certificate
3. Immediately:
  - a. Begin maintaining all Stage II records at the Station (Violation 1) and;
  - b. Begin maintaining all UST repair records at the Station (Violation 9).
4. Within 30 days:
  - a. Implement procedures to ensure licensed UST contractors are on-site and utilized during construction activities conducted at the Station (Violation 8); and
  - b. Implement procedures to ensure all proper notifications are made prior to the initiation of UST construction activities at the Station, (Violation 10).
5. Within 45 days, submit written certification to demonstrate compliance.
6. Upon obtaining a new fuel delivery certificate, post the fuel delivery certificate in a location at the Station where the delivery certificate is clearly visible at all times.

***Litigation Information***

**Date Petition(s) Filed:** April 27, 2011  
**Date(s) Green Card(s) Signed:** May 4, 2011  
**Date(s) Answer(s) Filed:** May 16, 2011  
**SOAH Referral Date:** June 21, 2011  
**Hearing Date(s):**  
Preliminary hearing: August 4, 2011 (defaulted)

***Contact Information***

**TCEQ Attorneys:** Tammy L. Mitchell, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Keith Frank, Waste Enforcement Section, (512) 239-1203  
**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5903  
**Respondent:** Raquif Merchant, President and Director, DESI GROUP, INC., 2325 Terping Place, Plano, Texas 75025  
**Respondent's Attorney:** N/A

**THIS PAGE INTENTIONALLY LEFT BLANK**



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	20-Dec-2010	<b>Screening</b>	30-Dec-2010	<b>EPA Due</b>	
	<b>PCW</b>	25-Mar-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>						
<b>Respondent</b>	DESI GROUP, INC. dba Fina Mart					
<b>Reg. Ent. Ref. No.</b>	RN102361060					
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Major			

<b>CASE INFORMATION</b>						
<b>Enf./Case ID No.</b>	40921	<b>No. of Violations</b>	10			
<b>Docket No.</b>	2011-0005-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>	Keith Frank			
		<b>EC's Team</b>	Enforcement Team 7			
<b>Admin. Penalty \$ Limit</b>	Minimum	\$0	<b>Maximum</b>	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$32,500
-------------------------------------------------------------	-------------------	----------

### 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>	35.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$11,375
---------------------------	-------------------	--------------------------------	----------

<b>Notes</b>	Enhancement for one previous NOV with same/similar violations, one order with denial of liability and poor performer classification.		
--------------	--------------------------------------------------------------------------------------------------------------------------------------	--	--

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

<b>Notes</b>	The Respondent does not meet the culpability criteria.			
--------------	--------------------------------------------------------	--	--	--

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

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

Total EB Amounts	\$279	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,450	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$43,875
-----------------------------	-----------------------	----------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.5%	<b>Adjustment</b>	\$210
---------------------------------------------	------	-------------------	-------

Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement to capture the avoided cost of compliance associated with violation nos. 5 and 10.		
--------------	------------------------------------------------------------------------------------------------	--	--

<b>Final Penalty Amount</b>	\$44,085
-----------------------------	----------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$44,085
-----------------------------------	-------------------------------	----------

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

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

<b>Notes</b>	Deferral not offered for non-expedited settlement.		
--------------	----------------------------------------------------	--	--

<b>PAYABLE PENALTY</b>	\$44,085
------------------------	----------

**Screening Date** 30-Dec-2010

**Docket No.** 2011-0005-PST-E

**PCW**

**Respondent** DESI GROUP, INC. dba Fina Mart

*Policy Revision 2 (September 2002)*

**Case ID No.** 40921

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102361060

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Keith Frank

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	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> )	1	20%
	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)** 25%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

Poor Performer

**Adjustment Percentage (Subtotal 7)** 10%

#### >> Compliance History Summary

**Compliance History Notes**

Enhancement for one previous NOV with same/similar violations, one order with denial of liability and poor performer classification.

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

Screening Date 30-Dec-2010

Docket No. 2011-0005-PST-E

PCW

Respondent DESI GROUP, INC. dba Fina Mart

Policy Revision 2 (September 2002)

Case ID No. 40921

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102361060

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.246(1) and (3) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station. Specifically, a copy of the correct California Air Resources Board ("CARB") Executive Order and maintenance records for the Stage II vapor recovery system were not maintained.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			25%
100% of the rule requirement was not met.					

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 44 Number of violation days

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

Violation Base Penalty \$2,500

One single event is recommended.

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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$22 Violation Final Penalty Total \$3,391

This violation Final Assessed Penalty (adjusted for limits) \$3,391

## Economic Benefit Worksheet

**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**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	\$500	16-Nov-2010	1-Oct-2011	0.87	\$22	n/a	\$22
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 record review 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**

\$22

**Screening Date** 30-Dec-2010  
**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Reg. Ent. Reference No.** RN102361060  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Docket No.** 2011-0005-PST-E

**PCW**

*Policy Revision 2 (September 2002)*

*PCW Revision October 30, 2008*

**Violation Number**

**Rule Cite(s)**

**Violation Description**

Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the automatic tank gauge riser on the regular unleaded tank was corroded along with faulty vacuum assist motors for dispenser nos. 3 through 8.

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text" value="25%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

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

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not 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"/>
weekly	<input type="text"/>
monthly	<input checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

One monthly event is recommended based on documentation of the violation during the November 16, 2010 record review to the November 29, 2010 date of compliance.

**Good Faith Efforts to Comply**

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
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

No good faith reduction is offered when a Default Order is recommended.

**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** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**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	\$500	16-Nov-2010	29-Nov-2010	0.04	\$0	\$1	\$1
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 repair the Stage II vapor recovery system. Date Required is the record review date.  
Final Date is the 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**

\$1

**Screening Date** 30-Dec-2010 **Docket No.** 2011-0005-PST-E  
**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Reg. Ent. Reference No.** RN102361060  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**PCW**

*Policy Revision 2 (September 2002)*  
*PCW Revision October 30, 2008*

**Violation Number** 3  
**Rule Cite(s)** 30 Tex. Admin. Code § 115.242(9) and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential		x		

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	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 and environmental receptors as a result of the violation.				

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 44 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

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

One quarterly event is recommended based on documentation of the violation during the November 16, 2010 record review to the December 30, 2010 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** \$2,500

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

**Statutory Limit Test**

**Estimated EB Amount** \$2 **Violation Final Penalty Total** \$3,391

**This violation Final Assessed Penalty (adjusted for limits)** \$3,391

## Economic Benefit Worksheet

**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**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)	\$100	16-Nov-2010	8-Mar-2011	0.31	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to post operating instructions on the dispensers. Date Required is the record review date.  
Final Date is the 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

\$100

**TOTAL**

\$2

**Screening Date** 30-Dec-2010 **Docket No.** 2011-0005-PST-E  
**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Reg. Ent. Reference No.** RN102361060  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**PCW**

*Policy Revision 2 (September 2002)*  
*PCW Revision October 30, 2008*

**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 underground storage tanks ("USTs") within 30 days of the occurrence of the change or addition. Specifically, the current operational status for tank no. 3 was not updated to reflect the tank as temporarily out-of-service.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

**>> Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			25%
100% of the rule requirement was not met.					

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 2 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

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

One single event is recommended.

**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: No good faith reduction is offered when a Default Order is recommended.

**Violation Subtotal** \$2,500

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

**Statutory Limit Test**

**Estimated EB Amount** \$0

**Violation Final Penalty Total** \$3,391

**This violation Final Assessed Penalty (adjusted for limits)** \$3,391

## Economic Benefit Worksheet

**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**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				0.00	\$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)	\$100	16-Nov-2010	18-Nov-2010	0.01	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. Date Required is the record review date. Final Date is the 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

\$100

**TOTAL**

\$0

Screening Date 30-Dec-2010

Docket No. 2011-0005-PST-E

PCW

Respondent DESI GROUP, INC. dba Fina Mart

Policy Revision 2 (September 2002)

Case ID No. 40921

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102361060

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.42(i)

Violation Description

Failed to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid and debris. Specifically, the overfill containers contained liquid and debris.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential		x		

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

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 and environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 6 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the November 16, 2010 record review to the November 22, 2010 date of compliance.

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 No good faith reduction is offered when a Default Order is recommended.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$3,391

This violation Final Assessed Penalty (adjusted for limits) \$3,391

## Economic Benefit Worksheet

**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**Media** Petroleum Storage Tank  
**Violation No.** 5

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	\$200	16-Nov-2010	22-Nov-2010	0.02	\$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 for removing liquid and debris from the spill buckets and proper disposal. Date Required is the record review date. Final Date is the 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]	\$100	17-Sep-2010	22-Nov-2010	1.10	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost of conducting bimonthly inspections of the sumps, manways, overspill containers or catchment basins. Date Required is 60 days prior to the record review date. Final Date is the date of compliance.

Approx. Cost of Compliance

\$300

**TOTAL**

\$105

**Screening Date** 30-Dec-2010 **Docket No.** 2011-0005-PST-E  
**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Reg. Ent. Reference No.** RN102361060  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**PCW**

*Policy Revision 2 (September 2002)*  
*PCW Revision October 30, 2008*

**Violation Number** 6  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.54(b)(2)  
**Violation Description** Failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, out-of-service tank no. 3 was not secured to prevent unauthorized access.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				50%
	Potential	x			

>> **Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%
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 3 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$5,000

One monthly event is recommended based on documentation of the violation during the November 16, 2010 record review to the November 19, 2010 date of compliance.

**Good Faith Efforts to Comply**

0.0% Reduction  
 Before NOV NOV to EDPRP/Settlement Offer

\$0

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes: No good faith reduction is offered when a Default Order is recommended.

**Violation Subtotal** \$5,000

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

**Statutory Limit Test**

**Estimated EB Amount** \$0

**Violation Final Penalty Total** \$6,782

**This violation Final Assessed Penalty (adjusted for limits)** \$6,782

## Economic Benefit Worksheet

**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**Media** Petroleum Storage Tank  
**Violation No.** 6

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)	\$500	16-Nov-2010	19-Nov-2010	0.01	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to secure tank no. 3 on the UST system. Date Required is the record review date. Final Date is the 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**

\$0

Screening Date 30-Dec-2010

Docket No. 2011-0005-PST-E

PCW

Respondent DESI GROUP, INC. dba Fina Mart

Policy Revision 2 (September 2002)

Case ID No. 40921

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102361060

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 334.48(e) and Tex. Water Code § 26.3475(a)

Violation Description Failed to ensure that all release detection equipment installed as part of a UST system is maintained in good operating condition. Specifically, the diesel line leak detectors were not functioning.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (50%).

>> Programmatic Matrix

Table with columns: 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

Table for violation events including frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and number of violation days (13).

One monthly event is recommended based on documentation of the violation during the November 16, 2010 record review to the November 29, 2010 date of compliance.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts to Comply with rows: Extraordinary, Ordinary, N/A.

Notes No good faith reduction is offered when a Default Order is recommended.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1 Violation Final Penalty Total \$6,782

This violation Final Assessed Penalty (adjusted for limits) \$6,782

## Economic Benefit Worksheet

**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**Media** Petroleum Storage Tank  
**Violation No.** 7

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	\$350	16-Nov-2010	29-Nov-2010	0.04	\$0	\$1	\$1
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 replace the diesel line leak detector. Date Required is the record review date. Final Date is the 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

\$350

**TOTAL**

\$1

**Screening Date** 30-Dec-2010 **Docket No.** 2011-0005-PST-E  
**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Reg. Ent. Reference No.** RN102361060  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**PCW**

*Policy Revision 2 (September 2002)*  
*PCW Revision October 30, 2008*

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**

**Base Penalty**

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

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

**>> Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Violation Events**

	<input type="text" value="1"/>	<input type="text" value="1"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text" value="x"/>	

**Good Faith Efforts to Comply**

Reduction

	<b>Before NOV</b>	<b>NOV to EDPRP/Settlement Offer</b>
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input 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** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**Media** Petroleum Storage Tank  
**Violation No.** 8

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)	\$500	7-Nov-2010	1-Oct-2011	0.90	\$22	n/a	\$22

Notes for DELAYED costs

Estimated cost to implement procedures to ensure licensed UST contractors are on-site and utilized during construction activities conducted at the Station. Date Required is one day prior to the construction activities. 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**

\$22

**Screening Date** 30-Dec-2010 **Docket No.** 2011-0005-PST-E  
**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Reg. Ent. Reference No.** RN102361060  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**PCW**

*Policy Revision 2 (September 2002)*  
*PCW Revision October 30, 2008*

**Violation Number** 9  
**Rule Cite(s)** 30 Tex. Admin. Code § 334.52(a)(4) and (d)(2)  
**Violation Description** Failed to obtain detailed written records of the repairs made to the UST system. Also, failed to maintain adequate records to demonstrate compliance with UST repair requirements.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

100% of the rule requirement was not met.

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 30 Number of violation days  
 mark only one with an x  
 daily  
 weekly  
 monthly  
 quarterly  
 semiannual  
 annual  
 single event x

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

One single event is recommended.

**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** \$2,500

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

**Statutory Limit Test**

**Estimated EB Amount** \$21 **Violation Final Penalty Total** \$3,391

**This violation Final Assessed Penalty (adjusted for limits)** \$3,391

## Economic Benefit Worksheet

**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**Media** Petroleum Storage Tank  
**Violation No.** 9

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	30-Nov-2010	1-Oct-2011	0.84	\$21	n/a	\$21
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 obtain and maintain records of UST construction activities at the Station. Date Required is the record review 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**

\$21

Screening Date 30-Dec-2010

Docket No. 2011-0005-PST-E

PCW

Respondent DESI GROUP, INC. dba Fina Mart

Policy Revision 2 (September 2002)

Case ID No. 40921

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102361060

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 10

Rule Cite(s) 30 Tex. Admin. Code § 334.6(b)(2) and (b)(2)(C)

Violation Description Failed to submit a written notification to the TCEQ at least 30 days prior to initiating a major UST construction activity. Specifically, the Respondent did not notify the TCEQ at least 30 days prior to initiating major UST construction activities on November 8, 2010. Also, failed to notify the TCEQ Dallas/Fort Worth regional office between 24 and 72 hours prior to the scheduled time of initiation of a major UST construction activity. Specifically, the Respondent did not notify the TCEQ Dallas/Fort Worth regional office between 24 and 72 hours prior to the scheduled time of initiation of major UST construction activities on November 8, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 1 Number of violation days

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

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Reduction	
	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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105 Violation Final Penalty Total \$3,391

This violation Final Assessed Penalty (adjusted for limits) \$3,391

## Economic Benefit Worksheet

**Respondent** DESI GROUP, INC. dba Fina Mart  
**Case ID No.** 40921  
**Req. Ent. Reference No.** RN102361060  
**Media** Petroleum Storage Tank  
**Violation No.** 10

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]	\$100	9-Oct-2010	16-Nov-2010	1.02	\$5	\$100	\$105
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to notify the TCEQ and appropriate regional office prior to the scheduled initiation of major UST construction activities. Date Required is 30 days prior to the commencement of construction activities. Final Date is the record review date.

Approx. Cost of Compliance

\$100

**TOTAL**

\$105

# Compliance History

Customer/Respondent/Owner-Operator: CN601482318 DESI GROUP, INC. Classification: POOR Rating: 202.50  
Regulated Entity: RN102361060 Fina Mart Classification: POOR Site Rating: 202.50  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 6211  
Location: 1612 E MAIN ST, GRAND PRAIRIE, TX, 75050  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: December 29, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: December 29, 2005 to December 29, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Keith Frank Phone: (512) 239-1203

## 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: 9/1/2010 Repeat Violator: No

## Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

### Effective Date: 11/06/2008

ADMINORDER 2008-0444-PST-E

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)  
5C THSC Chapter 382 382.085(b)

Description: Failed to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)(A)  
5C THSC Chapter 382 382.085(b)

Description: Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including, but not limited to absence or disconnection of any component that is a part of the approved system.

Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(1)(C)  
5C THSC Chapter 382 382.085(b)

Description: Failed to upgrade the Stage II equipment to onboard refueling vapor recovery ("ORVR") compatible systems.

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A)

Description: Failed to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)  
30 TAC Chapter 334, SubChapter C 334.49(c)(4)

Description: Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)  
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)

Description: Failed to test the line leak detectors at least once per year for performance and operational reliability.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)  
30 TAC Chapter 334, SubChapter C 334.50(b)(2)

Description: Failed to provide release detection for the piping associated with the USTs.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)  
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failed to ensure that all USTs are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)  
30 TAC Chapter 334, SubChapter C 334.50(d)(1)(B)(ii)

Description: Failure 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 percent of the total substance flowthrough for the month plus 130 gallons.

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 03/13/2008 (636474)

2 09/23/2010 (864558)

3 12/13/2010 (878584)

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

**Date: 09/23/2010 (864558) CN601482318**

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(1)

Description: Failure to have a current copy of the CARB Executive Order on-site.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)

Description: Failure to maintain the maintenance records for the Stage II vapor recovery system on-site.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 115, SubChapter C 115.242(3)

Description: Failure to have the Stage II Vapor Recovery System operating in accordance to the CARB Executive Order.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 115, SubChapter C 115.242(9)

Description: Failure to have the Stage II operating instructions posted at each fueling point.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to amend the TCEQ UST Registration form.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.42(i)

Description: Failure to insure that any overspill containers or catchment basins installed at any time, which are associated with a UST system must be inspected at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight. Any liquids or debris found in them during an inspection must be removed and properly disposed of within 72 hours of discovery.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failure to secure the tank to prevent tampering.

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  
DESI GROUP, INC. DBA FINA  
MART;  
RN102361060**

**§  
§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-0005-PST-E**

At its \_\_\_\_\_ agenda meeting, 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 respondent made the subject of this Order is DESI GROUP, INC. DBA Fina Mart ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 1612 E. Main Street in Grand Prairie, 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. During a record review conducted on November 16, 2010, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent:
  - a. Failed to maintain Stage II records at the Station. Specifically, a copy of the correct California Air Resources Board ("CARB") Executive Order and maintenance records for the Stage II vapor recovery system were not maintained;
  - b. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, the automatic tank gauge riser on the regular unleaded tank was corroded, and dispenser nos. 3 through 8 had faulty vacuum assist motors;

- c. Failed to post operating instructions on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system;
  - 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. Specifically, the current operational status for tank no. 3 was not updated to reflect the tank as temporarily out of service;
  - e. Failed to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid and debris. Specifically, the overfill containers contained liquid and debris;
  - f. Failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, out-of-service tank no. 3 was not secured to prevent unauthorized access;
  - g. Failed to ensure that all release detection equipment installed as part of a UST system is maintained in good operating condition. Specifically, the diesel line leak detectors were not functioning;
  - h. Failed to ensure that a licensed UST on-site supervisor was present at the Station during construction activities on the UST system. Specifically, there was not a licensed UST supervisor on-site during the UST construction activities conducted on November 8, 2010;
  - i. Failed to obtain detailed written records of the repairs made to the UST system, and failed to maintain adequate records to demonstrate compliance with UST repair requirements; and
  - j. Failed to submit a written notification to the TCEQ at least 30 days prior to initiating a major UST construction activity, and failed to notify the Dallas/Fort Worth regional office between 24 and 72 hours prior to the scheduled time of initiation of a major UST construction activity.
3. Respondent received notice of the violations on or about December 18, 2010.
  4. The Executive Director recognizes that Respondent implemented the following corrective measures at the Station:
    - a. Repaired the corroded automatic tank gauge riser on the regular unleaded tank and repaired the faulty vacuum assist motors for dispenser nos. 3 through 8, as of November 29, 2010 (Conclusion of Law No. 3);
    - b. Posted operating instructions on the front of each pump equipped with a Stage II vapor recovery system, as of March 8, 2011 (Conclusion of Law No. 4);

- c. Updated the UST registration to reflect the correct operational status of tank no. 3, as of November 18, 2010 (Conclusion of Law No. 5);
  - d. Inspected and removed liquid and debris from overfill containers, as of November 22, 2010 (Conclusion of Law No. 6);
  - e. Secured tank no. 3 to prevent unauthorized access, as of November 19, 2010 (Conclusion of Law No. 7); and
  - f. Repaired the diesel line leak detectors, as of November 29, 2010 (Conclusion of Law No. 8).
5. 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 DESI GROUP, INC. DBA Fina Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on April 27, 2011.
  6. Respondent filed an answer requesting a hearing on May 16, 2011, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on June 21, 2011.
  7. On July 1, 2011, the TCEQ Chief Clerk mailed notice of the August 4, 2011, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
  8. On August 4, 2011, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Respondent failed to appear. The ALJ entered a finding that Respondent was served with proper notice of the hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
  9. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Dismissing and Remanding, issued on August 4, 2011, so that TCEQ may dispose of this case on a default basis.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to maintain Stage II records at the Station, in violation of 30 TEX. ADMIN. CODE § 115.246(1) and (3) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order, and free of defects that would impair the effectiveness of the system, in violation of 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b).

4. As evidenced by Finding of Fact No. 2.c., Respondent failed to post operating instructions on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.242(9) and TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Finding of Fact No. 2.d., Respondent 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, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid and debris, in violation of 30 TEX. ADMIN. CODE § 334.42(i).
7. As evidenced by Finding of Fact No. 2.f., Respondent failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE § 334.54(b)(2).
8. As evidenced by Finding of Fact No. 2.g., Respondent failed to ensure that all release detection equipment installed as part of a UST system is maintained in good operating condition, in violation of 30 TEX. ADMIN. CODE § 334.48(e) and TEX. WATER CODE § 26.3475(a).
9. As evidenced by Finding of Fact No. 2.h., Respondent failed to ensure that a licensed UST on-site supervisor was present at the Station during construction activities on the UST system, in violation of 30 TEX. ADMIN. CODE § 334.52(a)(2).
10. As evidenced by Finding of Fact No. 2.i., Respondent failed to obtain detailed written records of the repairs made to the UST system, and failed to maintain adequate records to demonstrate compliance with UST repair requirements, in violation of 30 TEX. ADMIN. CODE § 334.52(a)(4) and (d)(2).
11. As evidenced by Finding of Fact No. 2.j., Respondent failed to submit a written notification to the TCEQ at least 30 days prior to initiating a major UST construction activity, and failed to notify the Dallas/Fort Worth regional office between 24 and 72 hours prior to the scheduled time of initiation of a major UST construction activity, in violation of 30 TEX. ADMIN. CODE § 334.6(b)(2) and (b)(2)(C).
12. As evidenced by Finding of Fact No. 6, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(a)(3) and 30 TEX. ADMIN. CODE § 70.109.
13. As evidenced by Finding of Fact No. 7, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.

14. As evidenced by Findings of Fact Nos. 8 and 9, Respondent failed to appear for the evidentiary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b)
15. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
16. An administrative penalty in the amount of forty-four thousand eighty-five dollars (\$44,085.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
17. 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.
18. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke Respondent's UST fuel delivery certificate if the Commission finds that good cause exists.
19. Good cause for revocation of Respondent's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 6 through 9, and Conclusions of Law Nos. 2 through 14.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of forty-four thousand eighty-five dollars (\$44,085.00) 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 Order completely resolve 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.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: DESI GROUP, INC. DBA Fina Mart; Docket No. 2011-0005-PST-E" to:

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

3. Respondent's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent shall cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ in accordance with 30 TEX. ADMIN. CODE §§ 334.7 and 334.8. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements of this Order.
4. Within 10 days after the effective date of this Order, Respondent shall send its UST fuel delivery certificate to:

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

5. Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Respondent shall:
    - i. Begin maintaining all Stage II records at the Station, in accordance with 30 TEX. ADMIN. CODE § 115.246 (Conclusion of Law No. 2); and
    - ii. Begin maintaining all UST repair records at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.52 (Conclusion of Law No. 10).
  - b. Within 30 days after the effective date of this Order, Respondent shall:
    - i. Implement procedures to ensure licensed UST contractors are on-site and utilized during construction activities conducted on the UST system at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.52 (Conclusion of Law No. 9); and
    - ii. Implement procedures to ensure all proper notifications are made prior to the initiation of UST construction activities at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.6 (Conclusion of Law No. 11).
  - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 5.d., below, to demonstrate compliance with Ordering Provision Nos. 4 through 5.b.ii.
  - d. The certification required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe

that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

Order Compliance Team  
Texas Commission on Environmental Quality  
Enforcement Division, MC 149A  
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

6. Upon obtaining a new fuel delivery certificate, Respondent shall post the fuel delivery certificate in a location at the Station where the delivery certificate is clearly visible at all times, in accordance with 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(iii).
7. All relief not expressly granted in this Order is denied.
8. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Station operations referenced in this Order.
9. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this 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.
10. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.

11. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
12. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
13. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

For the Commission

**AFFIDAVIT OF TAMMY L. MITCHELL**

**STATE OF TEXAS**

§  
§  
§

**COUNTY OF TRAVIS**

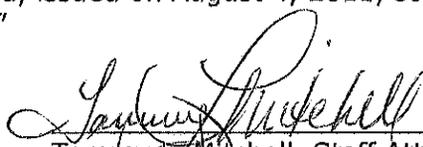
"My name is Tammy L. Mitchell. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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 DESI GROUP, INC. DBA Fina Mart' (the 'EDPRP') was filed in the TCEQ Chief Clerk's office on April 27, 2011.

Respondent filed an answer requesting a hearing on May 16, 2011, and the matter was referred to the State Office of Administrative Hearings ('SOAH') on June 21, 2011. On July 1, 2011, the TCEQ Chief Clerk mailed notice of the August 4, 2011 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

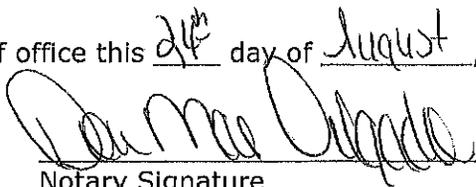
Respondent failed to appear at the hearing on August 4, 2011. At that hearing, I requested and received a finding that Respondent was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested that the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), which gives an ALJ the authority to remand the case back to the agency 'to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056(4) and the referring agency's rules.'

The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Dismiss and Remand, issued on August 4, 2011, so that TCEQ may dispose of this case on a default basis."

  
\_\_\_\_\_  
Tammy L. Mitchell, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tammy L. Mitchell, 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 2<sup>nd</sup> day of August, A.D. 2011.

  
\_\_\_\_\_  
Notary Signature

