

Executive Summary – Enforcement Matter – Case No. 40448  
MITHANI'S INC. D/B/A INDIO FOOD MART  
RN102461506  
Docket No. 2010-1607-PST-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
PST

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
1540 El Indio Highway, Eagle Pass, Maverick 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:** March 4, 2011

**Comments Received:** None

***Penalty Information***

<b>Total Penalty Assessed:</b>	\$3,675
<b>Amount Deferred for Expedited Settlement:</b>	N/A
<b>Amount Deferred for Financial Inability to Pay:</b>	N/A
<b>Total Paid to General Revenue:</b>	\$0
<b>Total Due to General Revenue:</b>	\$3,675
<b>SEP Conditional Offset:</b>	N/A

**Compliance History Classifications:**  
Person/CN – Average  
Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
Complaint Information: N/A  
**Date(s) of Investigation:** September 2, 2010  
**Date(s) of NOV(s):** February 26, 2010  
**Date(s) of NOE(s):** September 9, 2010

***Violation Information***

1. Failed to update the UST registration information to reflect the current operational status of the USTs [30 TEX. ADMIN. CODE § 334.7(d)(3)].
2. Failed to provide corrosion protection for the UST system, failed to empty the USTs to less than 2.5 centimeters (1 inch) of petroleum product, and failed to ensure that all piping, pumps, man ways and ancillary equipment have been capped, plugged, locked and/or otherwise secured to prevent access, tampering or vandalism by unauthorized persons [TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.49(a) and 334.54(b)(2), (c)(1), and (d)(2)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. Within 30 days:
  - a. Submit an amended registration to reflect the current operational status of the USTs; AND
  - b. Either:
    - i. Empty the USTs to less than 2.5 centimeters (1 inch) of petroleum product; AND
    - ii. Secure the fill caps and dispensers on the two USTs; AND
    - iii. Install and implement a corrosion protection method;
    - iv. OR, in lieu of Ordering Provisions 1.b.i.-1.b.iii., permanently remove the USTs from service.
2. Within 45 days, submit written certification demonstrating compliance with Ordering Provision Nos. 1.a. and either 1.b.i. through 1.b.iii., or 1.b.iv., as applicable.

***Litigation Information***

**Date Petition(s) Filed:** January 6, 2011  
**Date(s) Green Card(s) Signed:** January 8, 2011  
**Date(s) Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):**  
Preliminary hearing: N/A  
Evidentiary hearing: N/A

**Executive Summary – Enforcement Matter – Case No. 40448**  
**MITHANI'S INC. D/B/A INDIO FOOD MART**  
**RN102461506**  
**Docket No. 2010-1607-PST-E**

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***Contact Information***

**TCEQ Attorneys:** Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675  
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** John Muennink, Waste Enforcement Section, (713) 422-8970

**TCEQ Regional Contact:** Rose Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052

**Respondent:** Minaz Abdul, President, Mithani's Inc., 22227 Pelican Edge, San Antonio, TX 78158

**Respondent's Attorney:** N/A

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	13-Sep-2010	<b>Screening</b>	22-Sep-2010	<b>EPA Due</b>	
	<b>PCW</b>	28-Dec-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Mithani's Inc. dba Indio Food Mart		
<b>Reg. Ent. Ref. No.</b>	RN102461506		
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40448	<b>No. of Violations</b>	2
<b>Docket No.</b>	2010-1607-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>	John Muennink
		<b>EC's Team</b>	Enforcement Team 5
<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>	\$3,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$175
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<b>Notes</b>	Enhancement for one NOV with same/similar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$83	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,300	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$3,675
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$3,675
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$3,675
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	No deferral because this is not an expedited settlement.
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<b>PAYABLE PENALTY</b>	\$3,675
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**Screening Date** 22-Sep-2010

**Docket No.** 2010-1607-PST-E

**PCW**

**Respondent** Mithani's Inc. dba Indio Food Mart

*Policy Revision 2 (September 2002)*

**Case ID No.** 40448

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102461506

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** John Muennink

### 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> )	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/similar violations.

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

Screening Date 22-Sep-2010

Docket No. 2010-1607-PST-E

PCW

Respondent Mithani's Inc. dba Indio Food Mart

Policy Revision 2 (September 2002)

Case ID No. 40448

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102461506

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Muennink

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description Failed to update the underground storage tank ("UST") registration information to reflect the current operational status of the USTs. Specifically, the two USTs are registered as "in use". The registration status should reflect a status of "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			10%

Matrix Notes The Respondent failed to meet 100% of the rule requirement.

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.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark w th x)

\$0

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 \$3

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

## Economic Benefit Worksheet

**Respondent** Mithani's Inc. dba Indio Food Mart  
**Case ID No.** 40448  
**Req. Ent. Reference No.** RN102461506  
**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)	\$100	2-Sep-2010	31-Mar-2011	0.58	\$3	n/a	\$3

Notes for DELAYED costs

Estimated expense to update the UST registration. The Date Required is the date of the investigation. The Final Date is the date that corrective measures are estimated to be completed.

### 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**

\$3

Screening Date 22-Sep-2010

Docket No. 2010-1607-PST-E

PCW

Respondent Mithani's Inc. dba Indio Food Mart

Policy Revision 2 (September 2002)

Case ID No. 40448

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102461506

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Muennink

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 334.49(a) and 334.54(b)(2), (c)(1) and (d)(2) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to provide proper corrosion protection for the UST system. Failed to empty the USTs to less than 2.5 centimeters (1 inch) of petroleum product. Also, failed to ensure that all piping, pumps, man ways and ancillary equipment have been capped, plugged, locked and/or otherwise secured to prevent access, tampering or vandalism by unauthorized persons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment could be exposed to a significant amount of pollutants that would exceed levels protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 20 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended based on the investigation date of September 2, 2010 to the screening date of September 22, 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark w th 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 \$81

Violation Final Penalty Total \$2,625

This violation Final Assessed Penalty (adjusted for limits) \$2,625

## Economic Benefit Worksheet

**Respondent** Mithani's Inc. dba Indio Food Mart  
**Case ID No.** 40448  
**Req. Ent. Reference No.** RN102461506  
**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	\$1,500	2-Sep-2010	31-Mar-2011	0.58	\$3	\$58	\$60
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	\$500	2-Sep-2010	31-Mar-2011	0.58	\$14	n/a	\$14
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$200	2-Sep-2010	31-Mar-2011	0.58	\$6	n/a	\$6

Notes for DELAYED costs

Estimated expense to empty the two USTs to less than 2.5 centimeters of petroleum product (\$500), to secure the fill caps and dispensers on the two USTs (\$200) and to install and implement a corrosion protection method (\$1,500). The Dates Required are the date of the investigation. The Final Dates are the estimated date that corrective measures will be completed.

### 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

\$2,200

**TOTAL**

\$81

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603175951 Mithani's Inc. Classification: AVERAGE Rating: 7.50  
Regulated Entity: RN102461506 INDIO FOOD MART Classification: AVERAGE Site Rating: 7.50  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 41470  
Location: 1540 EL INDIO HWY, EAGLE PASS, TX, 78852  
TCEQ Region: REGION 16 - LAREDO  
Date Compliance History Prepared: September 22, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 22, 2005 to September 22, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: John Muennink Phone: (361) 825-3423

## 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? Yes
3. If Yes, who is the current owner/operator? OWNOPR Mithani's Inc.
4. If Yes, who was/were the prior owner(s)/operator(s)? OWNOPR FFP Operating Partners, L.P.
5. When did the change(s) in owner or operator occur? 01/30/2007
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.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 02/26/2010 | (793875) |
| 2 | 09/09/2010 | (860371) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |          |                          |
|--------------|---|----------|--------------------------|
| Date:        | 02/26/2010  | (793875) | CN603175951              |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  |          |                          |
| Description: | Failure to amend, update, or change UST system registration information as required.  |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(d)(2)   |          |                          |
| Description: | Failure to empty the UST's to less than 2.5 centimeters (1 inch) of petroleum product.  |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.49(c)(4)(C)<br>30 TAC Chapter 334, SubChapter C 334.54(c)(1)   |          |                          |
| Description: | Failure to inspect and test the operability of the cathodic protection (CP) system at least once every 3 years.   |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)<br>30 TAC Chapter 334, SubChapter C 334.54(c)(1)   |          |                          |
| Description: | Failure to regularly (at least once every 60 days) inspect the cathodic protection (CP) system rectifier and other system components to ensure they are operating properly.                             |          |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 334, SubChapter C 334.54(b)(2)   |          |                          |
| Description: | Failure to assure that all piping, pumps, man ways and ancillary equipment has been capped, plugged, locked and/or otherwise secured to prevent access, tampering or vandalism by unauthorized persons. |          |                          |

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  
MITHANI'S INC.  
D/B/A INDIO FOOD MART;  
RN102461506**

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

## **DEFAULT ORDER**

### **DOCKET NO. 2010-1607-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 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Mithani's Inc. d/b/a Indio Food 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), two underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 1540 El Indio Highway in Eagle Pass, Maverick County, Texas (the "Facility"). The USTs at the Facility 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.
2. During a record review conducted on September 2, 2010, a TCEQ Laredo Regional Office investigator documented that Respondent:
  - a. Failed to update the UST registration information to reflect the current operational status of the USTs. Specifically, the two USTs are registered as "in use". The registration should reflect a status of "temporarily out of service"; and
  - b. Failed to provide corrosion protection for the UST system, failed to empty the USTs to less than 2.5 centimeters (1 inch) of petroleum product, and failed to ensure that all piping, pumps, man ways, and ancillary equipment have been capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons.
3. Respondent received notice of the violations on or about September 14, 2010.
4. 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 Mithani's Inc. d/b/a Indio Food Mart," (the "EDPRP") in the TCEQ Chief Clerk's office on January 6, 2011.

5. By letter dated January 6, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on January 8, 2011, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP provided by the Executive Director. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

### 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 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to update the UST registration information to reflect the current operational status of the USTs, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide corrosion protection for the UST system, failed to empty the USTs to less than 2.5 centimeters (1 inch) of petroleum product, and failed to ensure that all piping, pumps, man ways, and ancillary equipment have been capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons, in violation of TEX. WATER CODE § 26.3475(d) and 30 TEX. ADMIN. CODE §§ 334.49(a) and 334.54(b)(2), (c)(1), and (d)(2).
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
6. 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.
7. An administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

8. 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.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of three thousand six hundred seventy-five dollars (\$3,675.00) 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: Mithani's Inc. d/b/a Indio Food Mart; Docket No. 2010-1607-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 shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Respondent shall:
    - i. Submit an amended registration to reflect the current operational status of the USTs, in accordance with 30 TEX. ADMIN. CODE § 334.7; AND
    - ii. Either:
      - A. Empty the USTs to less than 2.5 centimeters (1 inch) of petroleum product, in accordance with 30 TEX. ADMIN. CODE § 334.54(d)(2); AND
      - B. Secure the fill caps and dispensers on the two USTs, in accordance with 30 TEX. ADMIN. CODE § 334.54(b)(2); AND
      - C. Install and implement a corrosion protection method, in accordance with 30 TEX. ADMIN. CODE § 334.49(a); OR
      - D. In lieu of Ordering Provision Nos. 3.a.ii.A. through 3.a.ii.C, permanently remove the USTs from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.

- b. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 3.a.i. and either 3.a.ii.A. through 3.a.ii.C., or 3.a.ii.D., as applicable. The certification 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 copies of 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:

Rose Luna-Pirtle, Waste Section Manager  
Texas Commission on Environmental Quality  
Laredo Regional Office  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

4. All relief not expressly granted in this Order is denied.
5. 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 Facility operations referenced in this Order.
6. 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.
7. 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.

8. 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.
9. 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.
10. 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

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For the Commission

**AFFIDAVIT OF PHILLIP M. GOODWIN**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

"My name is Phillip M. Goodwin. 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 Mithani's Inc. d/b/a Indio Food Mart," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 6, 2011.

The EDPRP was mailed to Respondent's last known address on January 6, 2011 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on January 8, 2011, as evidenced by the signature on the card.

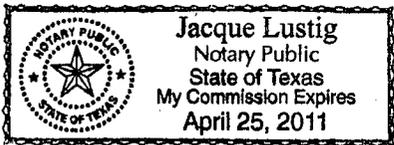
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."

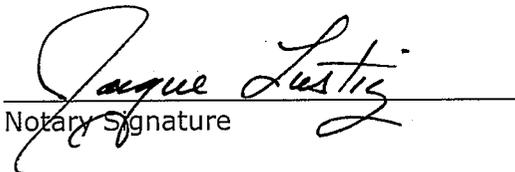


Phillip M. Goodwin, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 10<sup>th</sup> day of February, A.D. 2011.



  
Notary Signature