

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 42769
MALIK GROUP, INC. d/b/a Dairy Mart
RN101539849
Docket No. 2011-1916-PST-E

Order Type:

Default Shutdown Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

101 Lake Park Rd., Lewisville, Denton 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: July 6, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$20,959

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$20,959

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002 (PCW 1); September 2011 (PCW 2)

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: September 8, 2011 through September 16, 2011

Date(s) of NOV(s): N/A

Date(s) of NOE(s): September 30, 2011

Violation Information

1. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date [30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii)].
2. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].
3. 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)].
4. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].
5. Failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].
6. Failed to have a spill container or catchment basin that is liquid-tight [30 TEX. ADMIN. CODE § 334.51(b)(2)(B)(i) and (b)(2)(B)(ii)].
7. 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 [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(c)(1)].
8. Failed to inspect all sumps, manways, overspill containers or catchment basins associated with the 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)].
9. Failed to maintain a record at the Station of the dates on which gasoline was delivered to the dispensing Station [30 TEX. ADMIN. CODE § 115.226(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Immediately shut down operations of all USTs at the Facility:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances; and
 - e. Temporarily remove the USTs from service.

MALIK GROUP, INC. d/b/a Dairy Mart

RN101539849

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2. The USTs shall remain out of service until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection and corrosion protection violations have been corrected.
3. The Station's UST fuel delivery certificate is revoked immediately. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements.
4. 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.
5. Within 10 days, Respondent shall surrender the Station's UST fuel delivery certificate.
6. Within 15 days, submit a detailed written report documenting the steps taken to comply with Technical Requirements Nos. 1, 4 and 5.
7. Prior to receiving deliveries of gasoline and resuming sales of gasoline:
 - a. Submit a properly completed UST registration and self-certification form, including the change of product in the UST from gasoline to diesel;
 - b. Begin maintaining all Stage II records at the Station including, but not limited to fuel delivery records;
 - c. Conduct the required triennial testing of the cathodic protection system for the UST system at the Station;
 - d. Implement a release detection method for all USTs at the Station;
 - e. Begin conducting volume measurement and reconciliation of inventory control records;
 - f. Properly mark the UST fill ports with an identification number matching the number listed on the UST registration and self-certification form;
 - g. Begin conducting bimonthly inspections of all sumps, manways, and overfill containers or catchment basins;
 - h. Repair the spill bucket for the diesel UST and the spill bucket lid for the super unleaded UST; and
 - i. Obtain a new fuel delivery certificate.
8. 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.
9. Within 10 days of resuming sales of gasoline, submit written certification to demonstrate compliance with Technical Requirements Nos. 7 and 8.

Litigation Information**Date Petition(s) Filed:** April 4, 2012**Date Green Card(s) Signed:** April 9, 2012**Date Answer(s) Filed:** N/A**Contact Information****TCEQ Attorneys:** Peipey Tang, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Amy Swanholm, Public Interest Counsel, (512) 239-6363**TCEQ Enforcement Coordinator:** Danielle Porras, Enforcement Division, (713) 767-3682**TCEQ Regional Contact:** Sam Barrett, Dallas/Fort Worth Regional Office, (817) 588-5903**Respondent:** Waqar Malik, President, MALIK GROUP, INC, 1220 Oakwood, Plano, Texas 75023**Respondent's Attorney:** N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-Oct-2011	Screening	14-Oct-2011	EPA Due	
	PCW	14-Mar-2012				

RESPONDENT/FACILITY INFORMATION			
Respondent	MALIK GROUP, INC dba Dairy Mart		
Reg. Ent. Ref. No.	RN101539849		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	42769	No. of Violations	2
Docket No.	2011-1916-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$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.

Compliance History	2.0% Enhancement	Subtotals 2, 3, & 7	\$70
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Notes	Enhancement for one NOV with dissimilar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$115	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$200	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,570
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OTHER FACTORS AS JUSTICE MAY REQUIRE	3.1%	Adjustment	\$111
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided costs of compliance associated with violation no. 1.
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Final Penalty Amount	\$3,681
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,681
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$3,681
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Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 2 (September 2002)

Case ID No. 42769

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

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>)	0	0%
	Other written NOVs	1	2%
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) 2%

>> 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 dissimilar violations.

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

Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 2 (September 2002)

Case ID No. 42769

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(B)(ii)

Violation Description Failed to timely renew a previously issued underground storage tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the prior delivery certificate expired on May 31, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%). Matrix Notes: 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 Number of violation days 501

Table for event frequency: daily, weekly, monthly, quarterly, semiannual, annual (marked with x), single event.

Violation Base Penalty \$2,000

Two annual events are recommended.

Good Faith Efforts to Comply

Table for Good Faith Efforts: Reduction 0.0%, Before NOV, NOV to EDPRP/Settlement Offer.

\$0

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

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$115

Violation Final Penalty Total \$2,103

This violation Final Assessed Penalty (adjusted for limits) \$2,103

Economic Benefit Worksheet

Respondent MALIK GROUP, INC dba Dairy Mart
Case ID No. 42769
Req. Ent. Reference No. RN101539849
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	8-Sep-2011	19-Jun-2012	0.78	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to renew a delivery certificate by submitting a properly completed UST Registration and Self-Certification Form. The Date Required is the investigation date and the 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]	\$100	1-May-2010	8-Sep-2011	2.27	\$11	\$100	\$111
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost (\$100 per full year) to accurately prepare and submit an updated UST registration and obtain a valid TCEQ delivery certificate. The Date Required is 30 days prior to the expiration date of the delivery certificate and the Final Date is the investigation date.

Approx. Cost of Compliance

\$200

TOTAL

\$115

Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 2 (September 2002)

Case ID No. 42769

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(A)(i) and Tex. Water Code § 26.3467(a)

Violation Description Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, the Respondent received one delivery of fuel on January 25, 2011 and two deliveries on March 18, 2011 without a delivery certificate.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					5%
Potential			x		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

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

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 3 Number of violation days 3

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

Violation Base Penalty \$1,500

Three single events are recommended for accepting three fuel deliveries.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,578

This violation Final Assessed Penalty (adjusted for limits) \$1,578

Economic Benefit Worksheet

Respondent MALIK GROUP, INC dba Dairy Mart
Case ID No. 42769
Req. Ent. Reference No. RN101539849
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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

Economic benefit included in violation no. 1.

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

\$0

TOTAL

\$0



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	3-Oct-2011	Screening	14-Oct-2011	EPA Due	
	PCW	14-Mar-2012				

RESPONDENT/FACILITY INFORMATION						
Respondent	MALIK GROUP, INC dba Dairy Mart					
Reg. Ent. Ref. No.	RN101539849					
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	42769	No. of Violations	7			
Docket No.	2011-1916-PST-E	Order Type	1660			
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Danielle Porras			
		EC's Team	Enforcement Team 7			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000			

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$16,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	2.0% Enhancement	Subtotals 2, 3, & 7	\$325
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Notes: Enhancement for one NOV with dissimilar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$899
 Approx. Cost of Compliance: #NAME?
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$16,575
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OTHER FACTORS AS JUSTICE MAY REQUIRE	4.2%	Adjustment	\$703
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs of compliance associated with violation nos. 5 and 6.

Final Penalty Amount	\$17,278
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$17,278
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$17,278
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Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 3 (September 2011)

Case ID No. 42769

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

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>)	0	0%
	Other written NOVs	1	2%
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) 2%

>> **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 dissimilar violations.

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

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 2%

Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 3 (September 2011)

Case ID No. 42769

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 1

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 registration was not updated to reflect the change of product in the UST from gasoline to diesel.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0.0%)

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (5.0%)

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 36

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x

Violation Base Penalty \$1,250

One single event is recommended based on documentation of the violation during the September 8, 2011 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,329

This violation Final Assessed Penalty (adjusted for limits) \$1,329

Economic Benefit Worksheet

Respondent MALIK GROUP, INC dba Dairy Mart
Case ID No. 42769
Req. Ent. Reference No. RN101539849
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	8-Sep-2011	19-Jun-2012	0.78	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The Date Required is the investigation date and the 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

\$100

TOTAL

\$4

Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 3 (September 2011)

Case ID No. 42769

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A), (d)(1)(B)(ii) and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring). Failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				15.0%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1 36 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,750

One quarterly event is recommended from the September 8, 2011 investigation date to the October 14, 2011 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$59

Violation Final Penalty Total \$3,987

This violation Final Assessed Penalty (adjusted for limits) \$3,987

Economic Benefit Worksheet

Respondent MALIK GROUP, INC dba Dairy Mart
Case ID No. 42769
Req. Ent. Reference No. RN101539849
Media Petroleum Storage Tank
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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)	\$1,500	8-Sep-2011	19-Jun-2012	0.78	\$59	n/a	\$59

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs including recording daily volume measurement and monthly reconciliation of inventory control records. The Date Required is the investigation date and the 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

\$1,500

TOTAL

\$59

Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 3 (September 2011)

Case ID No. 42769

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(5)(C)

Violation Description Failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (5.0%).

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 1

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event (marked with x).

Violation Base Penalty \$1,250

One single event is recommended based on documentation of the violation during the September 8, 2011 investigation.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,329

This violation Final Assessed Penalty (adjusted for limits) \$1,329

Economic Benefit Worksheet

Respondent MALIK GROUP, INC dba Dairy Mart
Case ID No. 42769
Req. Ent. Reference No. RN101539849
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	8-Sep-2011	19-Jun-2012	0.78	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The Date Required is the investigation date and the 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

\$100

TOTAL

\$4

Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 3 (September 2011)

Case ID No. 42769

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.51(b)(2)(B)(i) and (ii)

Violation Description Failed to have a spill container or catchment basin that is liquid-tight. Specifically, the spill bucket for the diesel and the spill bucket lid for the super unleaded USTs were cracked and broken.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				15.0%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

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 \$21,250

\$3,750

Violation Events

Number of Violation Events 1 36 Number of violation days

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

Violation Base Penalty \$3,750

One quarterly event is recommended from the September 8, 2011 investigation date to the October 14, 2011 screening date.

Good Faith Efforts to Comply

	0.0% 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$109

Violation Final Penalty Total \$3,987

This violation Final Assessed Penalty (adjusted for limits) \$3,987

Economic Benefit Worksheet

Respondent MALIK GROUP, INC dba Dairy Mart
Case ID No. 42769
Req. Ent. Reference No. RN101539849
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	\$2,000	8-Sep-2011	19-Jun-2012	0.78	\$5	\$104	\$109
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 spill bucket for the diesel tank and spill bucket lid for the super unleaded tank. The Date Required is the investigation date and the 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

\$2,000

TOTAL

\$109

Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 3 (September 2011)

Case ID No. 42769

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(4) and Tex. Water Code § 26.3475(c)(1)

Violation 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.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				15.0%
Potential	x			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0.0%

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 result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 1095 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended for the three year period preceding the September 8, 2011 investigation 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$598

Violation Final Penalty Total \$3,987

This violation Final Assessed Penalty (adjusted for limits) \$3,987

Economic Benefit Worksheet

Respondent MALIK GROUP, INC dba Dairy Mart
Case ID No. 42769
Req. Ent. Reference No. RN101539849
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				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]	\$500	8-Sep-2008	8-Sep-2011	3.92	\$98	\$500	\$598
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for completing the triennial test. The Date Required is three years before the investigation date and the Final Date is the date of the investigation.

Approx. Cost of Compliance \$500

TOTAL \$598

Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 3 (September 2011)

Case ID No. 42769

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 6

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 spill buckets contained liquid and debris.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (5.0%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 36 Number of violation days

Table for frequency: daily, weekly, monthly, quarterly (marked with x), semiannual, annual, single event.

Violation Base Penalty \$1,250

One quarterly event is recommended from the September 8, 2011 investigation date to the October 14, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$105

Violation Final Penalty Total \$1,329

This violation Final Assessed Penalty (adjusted for limits) \$1,329

Economic Benefit Worksheet

Respondent MALIK GROUP, INC dba Dairy Mart
Case ID No. 42769
Req. Ent. Reference No. RN101539849
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)				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	10-Jul-2011	8-Sep-2011	1.08	\$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. The Date Required is 60 days before the investigation date and Final Date is the date of the investigation.

Approx. Cost of Compliance \$100

TOTAL \$105

Screening Date 14-Oct-2011

Docket No. 2011-1916-PST-E

PCW

Respondent MALIK GROUP, INC dba Dairy Mart

Policy Revision 3 (September 2011)

Case ID No. 42769

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101539849

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Danielle Porras

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 115.226(1) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to maintain a record at the Station of the dates on which gasoline was delivered to the dispensing Station.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%
100% of the rule requirement was not met.					

Adjustment \$23,750

\$1,250

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 \$1,250				

One single event is recommended based on documentation of the violation during the September 8, 2011 investigation.

Good Faith Efforts to Comply

	0.0%	Reduction	\$0
		Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary			
Ordinary			
N/A	x		(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.		

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20 Violation Final Penalty Total \$1,329

This violation Final Assessed Penalty (adjusted for limits) \$1,329

Economic Benefit Worksheet

Respondent MALIK GROUP, INC dba Dairy Mart
Case ID No. 42769
Req. Ent. Reference No. RN101539849
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				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	8-Sep-2011	19-Jun-2012	0.78	\$20	n/a	\$20
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 fuel delivery records. The Date Required is the investigation date and the 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

\$20

Compliance History

Customer/Respondent/Owner-Operator: CN602681702 MALIK GROUP, INC Classification:Average Rating:3.00
Regulated Entity: RN101539849 Dairy Mart Classification:Average Site Rating:3.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 6258
Location: 101 LAKE PARK RD, LEWISVILLE, TX, 75057
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: October 14, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 14, 2006 to October 14, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Danielle Porras Phone: (713) 767-3682

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?
2. Has there been a (known) change in ownership/operator of the site during the compliance period?
3. If Yes, who is the current owner/operator?
4. If Yes, who was/were the prior owner(s)/operator(s)?
5. When did the change(s) in owner or operator occur?
6. Rating Date: 9/1/2011 Repeat Violator:

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 | 01/15/2008 | (614238) |
| 2 | 02/08/2008 | (617547) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 01/15/2008 | (614238) | CN602681702 |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.245(2) | | |
| Description: | Failure to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first. The verification shall include all functional tests that were required for the initial system test, except for TXP-101 (Vapor Space Manifold), and TXP-103 (Dynamic Backpressure), which must be performed at least once every 36 months. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 115, SubChapter C 115.242(1)(C) | | |
| Description: | Failure to ensure that all Stage II vapor recovery systems are onboard refueling vapor recovery (ORVR) compatible. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.45(c)(3)(A) | | |
| Description: | Failure to install an emergency shutoff valve (aka shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser. The shut-off valve shall include a fusible link, and shall be designed to provide a positive shut-off of product flow in the event that a fire, collision, or other emergency occurs at the dispenser end of the pressurized line. | | |
- 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
MALIK GROUP, INC DBA
DAIRY MART;
RN101539849**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT AND SHUTDOWN ORDER

DOCKET NO. 2011-1916-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 station's fuel delivery certificate. The Commission also considered the Executive Director's Motion requesting the entry of an Order requiring the respondent to shutdown and remove from service the underground storage tanks ("USTs") located at 101 Lake Park Rd. in Lewisville, Denton County, Texas. The respondent made the subject of this Order is MALIK GROUP, INC d/b/a Dairy 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), a UST system and a convenience store with retail sales of gasoline located at 101 Lake Park Rd. in Lewisville, Denton 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 an investigation conducted on September 8, 2011, through September 16, 2011, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent:
 - a. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date. Specifically, the prior delivery certificate expired on May 31, 2010;
 - b. Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, Respondent received one delivery of fuel on January 25, 2011, and two deliveries on March 18, 2011, without a delivery certificate;
 - c. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the change of product in the UST from gasoline to diesel;

- d. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day;
 - e. Failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form;
 - f. Failed to have a spill container or catchment basin that is liquid-tight. Specifically, the spill bucket for the diesel and the spill bucket lid for the super unleaded USTs were cracked and broken;
 - g. 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;
 - h. Failed to inspect all sumps, manways, overspill containers or catchment basins associated with the 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 spill buckets contained liquid and debris; and
 - i. Failed to maintain a record at the Station of the dates on which gasoline was delivered to the dispensing Station.
3. By letter dated September 30, 2011, the TCEQ Dallas/Fort Worth Regional Office provided Respondent with notice of the violations and of TCEQ's authority to shut down and remove from service USTs not in compliance with release detection, spill and/or overfill prevention, corrosion protection, and/or financial assurance requirements if the violations are not corrected.
 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 MALIK GROUP, INC d/b/a Dairy Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on April 4, 2012.
 5. By letter dated April 4, 2012, 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 April 9, 2012, as evidenced by the signature on the card.
 6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.
 7. By letter dated May 15, 2012, the Executive Director provided Respondent with notice of TCEQ's intent to order the USTs at the Station to be shut down and removed from service if Respondent failed to correct the release detection and corrosion protection violations within 30 days after Respondent's receipt of the notice.

8. As of the date of entry of this Order, Respondent has not provided the Executive Director with documentation demonstrating that the release detection and corrosion protection violations alleged in Findings of Fact Nos. 2.d. and 2.g. have been corrected.
9. The USTs at the Station do not have release detection and corrosion protection as required by TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE §§ 334.49(c)(4), 334.50(b)(1)(A), 334.50(d)(1)(B)(ii), and 334.50(d)(1)(B)(iii)(I), and may be releasing petroleum products to the environment. Therefore, conditions at the Station constitute an imminent peril to public health, safety, and welfare.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact 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 timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(B)(ii).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of TEX. WATER CODE § 26.3467(a) and 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i).
4. As evidenced by Finding of Fact. No. 2.c., 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).
5. As evidenced by Finding of Fact. No. 2.d., Respondent failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); failed to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and failed to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I).
6. As evidenced by Finding of Fact. No. 2.e., Respondent failed to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C).
7. As evidenced by Finding of Fact. No. 2.f., Respondent failed to have a spill container or catchment basin that is liquid-tight, in violation of 30 TEX. ADMIN. CODE § 334.51(b)(2)(B)(i) and (b)(2)(B)(ii).
8. As evidenced by Finding of Fact. No. 2.g., Respondent 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, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.49(c)(4).

9. As evidenced by Finding of Fact. No. 2.h., Respondent failed to inspect all sumps, manways, overspill containers or catchment basins associated with the 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).
10. As evidenced by Finding of Fact. No. 2.i., Respondent failed to maintain a record at the Station of the dates on which gasoline was delivered to the dispensing Station, in violation of TEX. HEALTH & SAFETY CODE § 382.085(b) and 30 TEX. ADMIN. CODE § 115.226(1).
11. 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).
12. 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.
13. 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.
14. An administrative penalty in the amount of twenty thousand nine hundred fifty-nine dollars (\$20,959.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
15. As evidenced by Findings of Fact Nos. 2, 3, 7, and 8, Respondent failed to correct documented violations of Commission release detection and corrosion protection requirements within 30 days after Respondent received notice of the violations and notice of the Executive Director's intent to shut down the USTs at the Station.
16. TEX. WATER CODE §§ 26.3475(e) and 26.352(i) authorize the Commission to order a UST owner or operator to shut down a UST system if, within 30 days after receiving notice of the violations, the owner or operator fails to correct violations of Commission regulatory requirements relating to release detection for tanks and/or piping, spill and/or overfill protection for tanks, corrosion protection for tanks and/or piping, and/or acceptable financial assurance.
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 the Station's UST fuel delivery certificate if the Commission finds that good cause exists.
19. Good cause for revocation of the Station's UST fuel delivery certificate exists as justified by Findings of Fact Nos. 2 and 4 through 6 and Conclusions of Law Nos. 2 through 12.
20. As evidenced by Findings of Fact Nos. 8 and 9, current conditions at the Station constitute an imminent peril to public health, safety, and welfare. Therefore, pursuant to the Administrative Procedure Act, TEX. GOV'T CODE § 2001.144(a)(3), this Order is final and effective on the date rendered.

ORDERING PROVISIONS

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

1. Immediately upon the effective date of this Order, Respondent shall take the following steps to shut down operations of all USTs at the Station:
 - a. Cease dispensing fuel from the USTs;
 - b. Cease receiving deliveries of regulated substances into the USTs;
 - c. Padlock the dispensers;
 - d. Empty the USTs of all regulated substances in accordance with 30 TEX. ADMIN. CODE § 334.54(d); and
 - e. Temporarily remove the USTs from service in accordance with 30 TEX. ADMIN. CODE § 334.54.
2. The USTs at the Station shall remain out of service, pursuant to TEX. WATER CODE § 26.3475 and as directed by Ordering Provisions Nos. 1.a. through 1.e., until such time as Respondent demonstrates to the satisfaction of the Executive Director that the release detection, corrosion protection, and spill and/or overfill violations noted in Findings of Fact Nos. 2.d. and 2.g. and Conclusions of Law Nos. 5 and 8 have been corrected.
3. If Respondent elects to permanently remove from service any portion of the UST system at the Station, Respondent shall, immediately upon the effective date of this Order, permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55, and within 15 days after the effective date of this Order, shall submit a written report documenting compliance with 30 TEX. ADMIN. CODE § 334.55 to:

Petroleum Storage Tank Registration Team, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
4. The Station's UST fuel delivery certificate is revoked immediately upon the effective date of this Order. Respondent may submit an application for a new fuel delivery certificate only after Respondent has complied with all of the requirements set forth in this Order.
5. 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.
6. Within 10 days after the effective date of this Order, Respondent shall send the Station's 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
7. Within 15 days after the effective date of this Order, Respondent shall submit a detailed written report, in accordance with Ordering Provision No. 13, below, documenting the steps taken to comply with Ordering Provisions Nos. 1.a. through 1.e., 5, and 6.

8. Respondent is assessed an administrative penalty in the amount of twenty thousand nine hundred fifty-nine dollars (\$20,959.00) 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.
9. 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: MALIK GROUP, INC d/b/a Dairy Mart; Docket No. 2011-1916-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
10. Prior to receiving deliveries of gasoline and resuming retail sales of gasoline, Respondent shall undertake the following technical requirements:
 - a. Submit a properly completed UST registration and self-certification form, including the change of product in the UST from gasoline to diesel, in accordance with 30 TEX. ADMIN. CODE § 334.7 to (Conclusion of Law No. 4):

Registration and Reporting Section
Permitting & Registration Support Division, MC 129
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - b. Begin maintaining all Stage II records at the Station including, but not limited to fuel delivery records, in accordance with 30 TEX. ADMIN. CODE § 115.226 (Conclusion of Law No. 10); and
 - c. Conduct the required triennial testing of the cathodic protection system for the UST system at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.49 (Conclusion of Law No. 8);
 - d. Implement a release detection method for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusion of Law No. 5);
 - e. Begin conducting volume measurement and reconciliation of inventory control records, in accordance with 30 TEX. ADMIN. CODE § 334.50 (Conclusion of Law No. 5);
 - f. Properly mark the UST fill ports with an identification number matching the number listed on the UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8 (Conclusion of Law No. 6);
 - g. Begin conducting bimonthly inspections of all sumps, manways, and overflow containers or catchment basins, in accordance with 30 TEX. ADMIN. CODE § 334.42 (Conclusion of Law No. 9);
 - h. Repair the spill bucket for the diesel UST and the spill bucket lid for the super unleaded UST (Conclusion of Law No. 7); and

- i. Obtain a new fuel delivery certificate from the TCEQ (Conclusions of Law Nos. 2 and 3).
11. 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).
12. Within 10 days of resuming retail sales of gasoline, Respondent shall submit written certification, in accordance with Ordering Provision No. 13, below, to demonstrate compliance with Ordering Provisions Nos. 10 and 11.
13. The certifications 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 certifications 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

14. All relief not expressly granted in this Order is denied.
15. 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.
16. 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.

17. 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.
18. 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.
19. 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.
20. 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 this Order was rendered, pursuant to TEX. GOV'T CODE § 2001.144(a)(3).

AFFIDAVIT OF PEIPEY TANG

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Peipey Tang. 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 MALIK GROUP, INC d/b/a Dairy Mart" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on April 4, 2012.

The EDPRP was mailed to Respondent's last known address on April 4, 2012, 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 April 9, 2012, 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 and failed to request a hearing.

By letter dated May 15, 2012, sent via first class mail and certified mail, return receipt requested article no. 7002 2030 0005 7059 9234, I provided Respondent with notice of the TCEQ's intent to order the USTs at the Station shut down and removed from service if the violations pertaining to release detection and corrosion protection were not corrected within 30 days of Respondent's receipt of the letter.

As of the date of this affidavit, I am not aware of any evidence that indicates that Respondent has corrected the shutdown violations noted during the September 8, 2011, through September 16, 2011, investigation."

Peipey Tang
Peipey Tang, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Peipey Tang, 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 20th day of August, A.D. 2012.

Margaret Jackson
Notary Signature

