

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2006-0378-PWS-E TCEQ ID: RN102270121 CASE NO.: 29007  
RESPONDENT NAME: RACETRAC PETROLEUM, INC. DBA RACETRAC 512**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 4011 Highway 6 North, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> convenience store</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 10, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Anna Cox, Litigation Division, MC 175, (512) 239-0974                  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  <b>TCEQ Enforcement Coordinator:</b> Ms. Cheryl Thompson, Waste Enforcement Section, MC R-4, (817) 588-5886  <b>TCEQ Regional Contact:</b> Mr. Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3581  <b>Respondent:</b> Mr. Max Lenker, President, Racetrac Petroleum, Inc., 3225 Cumberland Boulevard, Suite 100, Atlanta, Georgia 30339  <b>Respondent's Attorney:</b> Mr. Joe Akers, Corporate Counsel, Racetrac Petroleum, Inc., 3225 Cumberland Boulevard Suite 100, Atlanta, Georgia 30339</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b>                      None</p> <p><b>Dates of Investigations Relating to this Case:</b>                      October 1, 2005 and April 4, 2006</p> <p><b>Date of NOV/NOEs Relating to this Case:</b>                      October 31, 2005 (NOV)                      January 2, 2006 (NOE)                      April 19, 2006 (NOE)</p> <p><b>Background Facts:</b></p> <p>The case was referred to Litigation on July 31, 2007. The Respondent signed an Agreed Order on September 11, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PWS:</b></p> <p>1. Failed to collect routine water samples for bacteriological analysis for the months of November and December 2004 and July and September 2005 and failed to post notice of the failure to conduct sampling [TEX. HEALTH &amp; SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B)].</p> <p>2. Failed to pay outstanding General Permits Stormwater Fees for Financial Administration Account No. 20017811 [TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 205.6]</p>	<p><b>Total Assessed:</b> \$1,200</p> <p><b>Total Deferred:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,200</p> <p>The Respondent has paid the \$1,200 administrative penalty in full.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b> Three repeated enforcement actions (NOVs) over the prior five year period for the same violation.</p>	<p><b>Corrective Action Taken:</b></p> <p>The Respondent has implemented the following corrective measures:</p> <ol style="list-style-type: none"> <li>1. Began performing routine bacteriological sampling in October 2005;</li> <li>2. Paid outstanding General Permits Stormwater Fees for Financial Administration Account No. 20017811 and does not have any current outstanding or delinquent fees as of August 9, 2006.</li> </ol>



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

<b>DATES</b>	<b>Assigned</b>	20-Mar-2006	<b>Screening</b>	31-Mar-2006	<b>EPA Due</b>	
	<b>PCW</b>	07-Apr-2006				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Racetrac Petroleum, Inc. dba Racetrac 512
<b>Reg. Ent. Ref. No.</b>	RN102270121
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor Source

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	29007	<b>No. of Violations</b>	2
<b>Docket No.</b>	2006-0378-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Enf. Coordinator</b>	Cheryl Thompson
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 4
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$1,000

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

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

**Compliance History** 20% Enhancement **Subtotals 2, 3, & 7** \$200

**Notes** The respondent was issued 4 NOVs for the same or similar violations in the past five years.

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

**Notes** The respondent does not meet the culpability criteria.

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

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

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

**Economic Benefit** 0% Enhancement\* **Subtotal 6** \$0

<b>Total EB Amounts</b>	\$524	<i>*Capped at the Total EB \$ Amount</i>
<b>Approx. Cost of Compliance</b>	\$500	

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$1,200

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

**Notes**

**Final Penalty Amount** \$1,200

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$1,200

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

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

**Notes** No deferral is recommended due to Findings Order.

**PAYABLE PENALTY** **\$1,200**

**Screening Date** 31-Mar-2006

**Docket No.** 2006-0378-PWS-E

**PCW**

**Respondent** Racetrac Petroleum, Inc. dba Racetrac 512

*Policy Revision 2 (September 2002)*

**Case ID No.** 29007

*PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN102270121

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Cheryl Thompson

**Compliance History Worksheet**

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	4	20%
	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)</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)** 20%

>> **Repeat Violator (Subtotal 3)**

N/A <

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

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

Average Performer <

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

The respondent was issued 4 NOVs for the same or similar violations in the past five years.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 20%

Screening Date 31-Mar-2006

Docket No. 2006-0378-PWS-E

PCW

Respondent Racetrac Petroleum, Inc. dba Racetrac 512

Policy Revision 2 (September 2002)

Case ID No. 29007

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN102270121

Media [Statute] Public Water Supply

Enf. Coordinator Cheryl Thompson

Violation Number

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B)

Secondary Rule Cite(s) Tex. Health & Safety Code §341.033(d)

Violation Description Failed to collect routine water samples for bacteriological analysis for the months of November and December 2004 and July and September 2005 and failed to post a public notice of the failure to conduct sampling, as documented during a record review investigation conducted on October 1, 2005.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes Failure to sample may allow undetected contaminants that exceed levels that are protective of human health or environmental receptors being distributed to the public for human consumption.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Four monthly events are recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

### Economic Benefit Worksheet

Respondent Racetrac Petroleum, Inc. dba Racetrac 512  
 Case ID No. 29007  
 Reg. Ent. Reference No. RN102270121  
 Media [Statute] Public Water Supply  
 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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Item	Cost	Date	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$500	01-Nov-2004	31-Oct-2005	1.0	\$25	\$499	\$524
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs  
 Estimated cost to conduct routine bacteriological sampling and to post public notice of the violation. The beginning date is the first month sampling was not performed, the end date is the last month the sampling was not conducted.

Approx. Cost of Compliance

**TOTAL**

**Screening Date** 31-Mar-2006

**Docket No.** 2006-0378-PWS-E

**PCW**

**Respondent** Racetrac Petroleum, Inc. dba Racetrac 512

*Policy Revision 2 (September 2002)*

**Case ID No.** 29007

*PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN102270121

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Cheryl Thompson

**Violation Number**

**Primary Rule Cite(s)**

**Secondary Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

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

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

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

### Economic Benefit Worksheet

Respondent Racetrac Petroleum, Inc. dba Ractrac 512  
 Case ID No. 29007  
 Reg. Ent. Reference No. RN102270121  
 Media [Statute] Public Water Supply  
 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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

There is no economic benefit associated with this violation.

Approx. Cost of Compliance \$0 TOTAL \$0

# Compliance History

Customer/Respondent/Owner-Operator: CN600505283 Racetrac Petroleum, Inc. Classification: AVERAGE Rating: 2.42  
 Regulated Entity: RN102270121 RACETRAC 512 Classification: AVERAGE BY Site Rating: 3.01  
 DEFAULT  
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 67253  
 REGISTRATION  
 PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1012927  
 WATER LICENSING LICENSE 1012927  
 Location: 4011 HIGHWAY 6 N, HOUSTON, TX, 77084 Rating Date: September 01 06 Repeat Violator:  
 NO  
 TCEQ Region: REGION 12 - HOUSTON  
 Date Compliance History Prepared: December 18, 2007  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: April 01, 2001 to April 01, 2006

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Cheryl Thompson Phone: (817) 588-5886

## 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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 12/05/2003 (254782)

N/A

2 01/28/2005 (453888)

3 02/02/2005 (453086)

4 08/25/2005 (453893)

5 10/31/2005 (453924)

6 03/16/2006 (457213)

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

Date: 01/28/2005 (453888)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
5A THC Chapter 341, SubChapter A 341.033(d)

Description: Failure to collect any routine monitoring samples in 12/2004.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: Failure to post a PN for not collecting any routine monitoring samples in 12/2004.

Date: 02/02/2005 (453086)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
5A THC Chapter 341, SubChapter A 341.033(d)

Description: Failure to collect any routine monitoring samples in 11/2004.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: Failure to post a PN for not collecting any routine monitoring samples in 11/2004.

Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 5A THC Chapter 341, SubChapter A 341.033(d)		
Description:	Failure to collect any routine monitoring samples in 07/2005.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)		
Description:	Failure to post a PN for not collecting any routine monitoring samples in 07/2005.		
Date	10/31/2005	(453924)	
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 5A THC Chapter 341, SubChapter A 341.033(d)		
Description:	Failure to collect any routine monitoring samples in 09/2005.		
Self Report?	NO	Classification	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)		
Description:	Failure to post a PN for not collecting any routine monitoring samples in 09/2005.		

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  
RACETRAC PETROLEUM, INC.  
DBA RACETRAC 512;  
RN102270121**

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

**AGREED ORDER  
DOCKET NO. 2006-0378-PWS -E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Racetrac Petroleum, Inc. dba Racetrac 512 ("Racetrac") under the authority of TEX. WATER CODE ch. 5, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 205 and 290 . The Executive Director of the TCEQ, represented by the Litigation Division, and Racetrac, represented by Joe Akers, Corporate Counsel of Racetrac Petroleum, Inc., presented this agreement to the Commission.

Racetrac understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Racetrac agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Racetrac.

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

**FINDINGS OF FACT**

1. Racetrac owns and operates a convenience store located at 4011 Highway 6 North, Houston, Harris County, Texas (the "Facility"). The Facility has one service connection and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water supply system as defined in 30 TEX. ADMIN. CODE § 290.28(47).

2. During a record review conducted on October 1, 2005, a TCEQ Central Office investigator documented that Racetrac failed to collect routine water samples for bacteriological analysis for the months of November and December 2004 and July and September 2005 and failed to post a public notice of the failure to conduct sampling.
3. During a record review conducted on April 4, 2006, a TCEQ Central Office investigator documented that Racetrac failed to pay General Permits Stormwater Fees for Financial Administration Account No. 20017811.
4. Racetrac received notice of the violations alleged in Section II ("Allegations") on or about January 7, 2006.
5. The Executive Director recognizes that Racetrac has implemented the following corrective measures at the Facility:
  - a. Began performing routine bacteriological sampling in October 2005; and
  - b. Has paid outstanding General Permits Stormwater Fees for Financial Administration Account No. 20017811 and does not have any current outstanding or delinquent fees.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Racetrac is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002 and ch. 5, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Racetrac failed to collect routine water samples for bacteriological analysis for the months of November and December 2004 and July and September 2005 and failed to post public notice of the failure to conduct sampling, in violation of TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B).
3. As evidenced by Finding of Fact No. 3, Racetrac failed to pay outstanding General Permits Stormwater Fees for Financial Administration Account No. 20017811, in violation of TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 205.6.
4. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Racetrac for violations of TEX. HEALTH & SAFETY CODE, TCEQ rules, and orders adopted under the Code.

5. An administrative penalty in the amount of one thousand two hundred dollars (\$1,200.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Racetrac has paid one thousand two hundred dollars (\$1,200.00) of the administrative penalty.

### ORDERING PROVISIONS

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

1. Racetrac is assessed an administrative penalty in the amount of one thousand two hundred dollars (\$1,200.00), as set forth in Conclusion of Law No. 5, for violations of TEX. HEALTH & SAFETY CODE ch. 341, TEX. WATER CODE ch. 5, and the rules of the Commission. The payment of this administrative penalty and Racetrac's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Racetrac Petroleum, Inc. dba Racetrac 512; Docket No. 2006-0378-PWS-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon Racetrac.
3. 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 Racetrac if the Executive Director determines that Racetrac has not complied with one or more of the terms or conditions in this Agreed Order.
4. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
5. This Agreed Order, issued by the Commission, shall not be admissible against Racetrac in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
  
7. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Racetrac, or three days after the date on which the Commission mails notice of the Order to Racetrac, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

S. Bergeron Perdue

For the Executive Director

11/9/07

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or Racetrac Petroleum, Inc. dba Racetrac 512's failure to timely pay the penalty amount, may result in:

- A negative impact on Racetrac Petroleum, Inc. dba Racetrac 512's compliance history;
- Greater scrutiny of any permit applications submitted by Racetrac Petroleum, Inc. dba Racetrac 512;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Racetrac Petroleum, Inc. dba Racetrac 512;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Racetrac Petroleum, Inc. dba Racetrac 512; and
- TCEQ seeking other relief as authorized by law.

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

Max Lenker President

Signature

9/11/07

Date

Max Lenker

Name (Printed or typed)

Authorized representative of

Racetrac Petroleum, Inc. dba Racetrac 512