EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0608-PST-E **TCEQ ID:** RN102714599 **CASE NO.:** 37533

RESPONDENT NAME: Jeffrey H. Jeong dba A J All Seasons 1

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: A J All Seasons 1, 9343 Clay Road, Houston, Harris County

TYPE OF OPERATION: Convenience store with retail sales of fuel

SMALL BUSINESS: __X__ **Yes** ____ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on August 31, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Elvia Maske, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0789; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387
Respondent: Mr. Jeffrey Jeong, Owner, A J All Seasons 1, 9343 Clay Road, Houston, Texas 77080
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** March 23, 2009 **Date of NOV/NOE Relating to this Case:** April 17, 2009 (NOE) **Background Facts:** This was a routine investigation. **WASTE** Failure to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the underground storage tank ("UST") system [30 TEX. ADMIN. CODE § 334.50(d)(4)(A)(ii)(II) and TEX. WATER CODE § 26.3475(c)(1)].	**Total Assessed:** $3,850 **Total Deferred:** $770 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $136 (remaining $2,944 due in 23 monthly payments of $128 each) **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** _X_ Yes __ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent submitted passing UST leak test results taken by the automatic tank gauge system on March 26, 2009.

Additional ID No(s).: 70063

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES						
Assigned	20-Apr-2009					
PCW	27-Apr-2009	Screening	27-Apr-2009	EPA Due		

RESPONDENT/FACILITY INFORMATION

Respondent	Jeffrey H. Jeong dba A J All Seasons 1		
Reg. Ent. Ref. No.	RN102714599		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	37533	No. of Violations	1
Docket No.	2009-0608-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Elvia Maske
		EC's Team	Enforcement Team 6

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $5,000

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* $100

Notes: Enhancement recommended for one prior NOV for dissimilar violation.

Culpability No 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* $1,250

Economic Benefit 0.0% Enhancement* — *Subtotal 6* $0

Total EB Amounts $0
Approx. Cost of Compliance $1,200
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $3,850

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $3,850

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $3,850

DEFERRAL 20.0% Reduction — *Adjustment* -$770

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $3,080

Screening Date 27-Apr-2009 **Docket No.** 2009-0608-PST-E **PCW**

Respondent Jeffrey H. Jeong dba A J All Seasons 1 *Policy Revision 2 (September 2002)*

Case ID No. 37533 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102714599

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
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 recommended for one prior NOV for dissimilar violation.

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

Screening Date 27-Apr-2009 **Docket No.** 2009-0608-PST-E **PCW**

Respondent Jeffrey H. Jeong dba A J All Seasons 1 *Policy Revision 2 (September 2002)*

Case ID No. 37533 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102714599

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.50(d)(4)(A)(ii)(II) and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the UST system.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

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

Adjustment $5,000

$5,000

Violation Events

Number of Violation Events 1 — 3 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $5,000

One monthly event is recommended from the investigation date of March 23, 2009 to the compliance date of March 26, 2009.

Good Faith Efforts to Comply

25.0% Reduction $1,250

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

Notes: The Respondent achieved compliance on March 26, 2009.

Violation Subtotal $3,750

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $3,850

This violation Final Assessed Penalty (adjusted for limits) $3,850

Economic Benefit Worksheet

Respondent Jeffrey H. Jeong dba A J All Seasons 1
Case ID No. 37533
Reg. Ent. Reference No. RN102714599
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	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)	$1,200	23-Mar-2009	26-Mar-2009	0.01	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to provide proper release detection for the USTs. Date Required is the date of investigation. Final Date is the date of compliance.

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

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

Notes for AVOIDED costs:

Approx. Cost of Compliance: $1,200

TOTAL: $0

Compliance History Report

Customer/Respondent/Owner-Operator: CN601379050 JEONG, JEFFREY H Classification: AVERAGE Rating: 0.33

Regulated Entity: RN102714599 A J ALL SEASONS 1 Classification: AVERAGE Site Rating: 0.33

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 70063

Location: 9343 CLAY RD, HOUSTON, TX, 77080

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: April 27, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 27, 2004 to April 27, 2009

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

Name: Elvia Maske Phone: (512) 239 - 0789

Site Compliance History Components

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

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 04/16/2006 (460088)
2 05/22/2006 (466614)
3 04/17/2009 (741364)

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

Date: 04/16/2006 (460088)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 115, SubChapter C 115.246(5)
Description: 30 Tex. Admin. Code Section 115.246(5)- Failure to maintain a record of the results of testing conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in § 115.245 of this title (relating to Testing Requirements).

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
JEFFREY H. JEONG DBA	§	
A J ALL SEASONS 1	§	
RN102714599	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2009-0608-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Jeffrey H. Jeong dba A J All Seasons 1 ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of fuel at 9343 Clay Road in Houston, Harris County, Texas (the "Facility").

2. The Respondent's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 22, 2009.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Eight Hundred Fifty Dollars ($3,850) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Thirty-Six Dollars ($136) of the

administrative penalty and Seven Hundred Seventy Dollars ($770) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Nine Hundred Forty-Four Dollars ($2,944) of the administrative penalty shall be payable in 23 monthly payments of One Hundred Twenty-Eight Dollars ($128) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondent submitted passing UST leak test results taken by the automatic tank gauge system on March 26, 2009.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. 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.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the UST system, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(4)(A)(ii)(II) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on March 23, 2009.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jeffrey H. Jeong dba A J All Seasons 1, Docket No. 2009-0608-PST-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 7/27/2009
For the Executive Director Date

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

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

_____ 07/06/2009
Signature Date

Jeffery Jeong _____ Owner
Name (Printed or typed) Title
Authorized Representative of
Jeffrey H. Jeong dba A J All Seasons 1

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.