

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1250-PST-E RN102780103 CASE NO. 38089
RESPONDENT NAME: JERRY SPENCER, L.P. d/b/a JJS FASTOP 294

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input 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	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" 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

SITE WHERE VIOLATIONS OCCURRED: 5401 Watauga Road, Watauga, Tarrant County

TYPE OF OPERATION: convenience store with retail sales of gasoline

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received on May 26, 2009, alleging that the complainant purchased fuel at the gas station and immediately had engine problems, that the service department at the dealership confirmed the problem to be contaminated fuel, and that the fuel tanks may have been leaking. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired November 8, 2010. No comments were received.

CONTACTS AND MAILING LIST:

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

TCEQ Enforcement Coordinator: Elvia Maske, Waste Enforcement Section, MC 128, (512) 239-0789

TCEQ Regional Contact: Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903

Respondent: Jerry Spencer, Director and President, JERRY SPENCER, L.P., P.O. Box 1909, Palestine, Texas 75802

Respondent's Attorney: Donald Grissom, Grissom & Thompson, L.L.P., 509 West 12th Street, Austin, Texas 78701

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint: May 26, 2009</p> <p>Dates of Investigation: June 12, 2009 (complaint investigation) June 24, 2009 (follow-up)</p> <p>Date of NOE Relating to this Case: June 30, 2009</p> <p>Background Facts: The EDPRP was filed on December 3, 2009. Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on September 21, 2010.</p> <p>Current Compliance Status: Respondent has submitted documentation demonstrating compliance with violation nos. 4 and 5. Respondent's delivery certificate expires April 30, 2011.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to report a suspected release to the agency within 24 hours of discovery [30 TEX. ADMIN. CODE § 334.72(3) and (3)(B)]. Failed to investigate a suspected release of regulated substances within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74]. Failed to have the required UST records maintained, readily accessible, and made available for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)]. Failed to equip the UST system with a spill containment device designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container [30 TEX. ADMIN. CODE § 334.51(b)(2)(B) and TEX. WATER CODE § 26.3475(c)(2)]. Failed to maintain Stage II records at the Station [30 TEX. ADMIN. CODE § 115.246(5) and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 	<p>Total Assessed: \$20,200</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$20,200</p> <p>Respondent paid the administrative penalty in full.</p> <p>Compliance History Classifications: Person/CN – Average Site/RN - Average</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken: The Executive Director recognizes that Respondent performed the following corrective actions at the Station:</p> <ol style="list-style-type: none"> Submitted documentation demonstrating the replacement of the spill bucket for tank no. 1 on June 24, 2009 (violation 4); and Began maintaining Stage II vapor recovery test records at the Station on June 24, 2009 (violation 5). <p>Ordering Provisions: Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Begin maintaining UST overfill prevention equipment records (violation 3); Establish and implement a process for reporting a suspected release (violation 1); and Conduct an investigation of the suspected release and implement appropriate corrective measures if required (violation 2). Within 75 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Jul-2009			
	PCW	6-May-2010	Screening	13-Jul-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	JERRY SPENCER, L.P. dba JJS Fastop 294				
Reg. Ent. Ref. No.	RN102780103				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major		

CASE INFORMATION					
Enf./Case ID No.	38089	No. of Violations	5		
Docket No.	2009-1250-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 7		
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$17,500
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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	22.0% Enhancement	Subtotals 2, 3, & 7	\$3,850
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Notes: Enhancement for one NOV with dissimilar violations and one 1660 order.

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	\$1,250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$438
 Approx. Cost of Compliance \$5,850
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$20,100
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.5%	Adjustment	\$100
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.

Final Penalty Amount	\$20,200
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$20,200
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$20,200
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Screening Date 13-Jul-2009

Docket No. 2009-1250-PST-E

PCW

Respondent JERRY SPENCER, L.P. dba JJS Fastop 294

Policy Revision 2 (September 2002)

Case ID No. 38089

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102780103

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 (<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>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 22%

>> **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 and one 1660 order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

Screening Date 13-Jul-2009 **Docket No.** 2009-1250-PST-E **PCW**
Respondent JERRY SPENCER, L.P. dba JJS Fastop 294 *Policy Revision 2 (September 2002)*
Case ID No. 38089 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102780103
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	x

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent JERRY SPENCER, L.P. dba JJS Fastop 294
Case ID No. 38089
Reg. Ent. Reference No. RN102780103
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)				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	1-Oct-2008	2-Oct-2008	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. Date Required is the date of the suspected release. Final Date is the date the report was due.

Approx. Cost of Compliance \$100

TOTAL \$100

Screening Date 13-Jul-2009 **Docket No.** 2009-1250-PST-E **PCW**
Respondent JERRY SPENCER, L.P. dba JJS Fastop 294 *Policy Revision 2 (September 2002)*
Case ID No. 38089 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102780103
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="checkbox"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent JERRY SPENCER, L.P. dba JJS Fastop 294
Case ID No. 38089
Reg. Ent. Reference No. RN102780103
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
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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)	\$5,000	30-Oct-2008	1-Mar-2010	1.33	\$334	n/a	\$334

Notes for DELAYED costs

Estimated cost to investigate a suspected release. Date Required is the date when the release investigation was due. Final Date is the expected 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

\$5,000

TOTAL

\$334

Screening Date 13-Jul-2009 **Docket No.** 2009-1250-PST-E **PCW**
Respondent JERRY SPENCER, L.P. dba JJS Fastop 294 *Policy Revision 2 (September 2002)*
Case ID No. 38089 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102780103
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Violation Description Failed to have the required UST records maintained, readily accessible, and made available for inspection upon request by agency personnel. Specifically, overfill prevention equipment documentation was not available.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential			

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification	x			

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 31 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during a record review conducted on June 12, 2009.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$3 **Violation Final Penalty Total** \$3,065

This violation Final Assessed Penalty (adjusted for limits) \$3,065

Economic Benefit Worksheet

Respondent JERRY SPENCER, L.P. dba JJS Fastop 294
Case ID No. 38089
Reg. Ent. Reference No. RN102780103
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	\$100	12-Jun-2009	1-Feb-2010	0.64	\$3	n/a	\$3
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 UST records. Date Required is the investigation date. Final Date is the expected 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

\$3

Screening Date 13-Jul-2009 **Docket No.** 2009-1250-PST-E **PCW**
Respondent JERRY SPENCER, L.P. dba JJS Fastop 294 *Policy Revision 2 (September 2002)*
Case ID No. 38089 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102780103
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Elvia Maske

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 334.51(b)(2)(B) and Tex. Water Code § 26.3475(c)(2)

Violation Description
 Failed to equip the UST system with a spill containment device designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container. Specifically, the spill bucket for tank no. 1 was cracked.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1 12 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the June 12, 2009 investigation date to the June 24, 2009 compliance date.

Good Faith Efforts to Comply 25.0% Reduction \$625

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

Notes
 The Respondent achieved compliance on June 24, 2009, prior to the Notice of Enforcement (NOE) dated June 30, 2009.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$0 **Violation Final Penalty Total** \$2,437

This violation Final Assessed Penalty (adjusted for limits) \$2,437

Economic Benefit Worksheet

Respondent JERRY SPENCER, L.P. dba JJS Fastop 294
Case ID No. 38089
Reg. Ent. Reference No. RN102780103
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	\$150	12-Jun-2009	24-Jun-2009	0.03	\$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

Estimated cost to replace the spill bucket. Date Required is the investigation date. Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$150

TOTAL

\$0

Screening Date 13-Jul-2009 Docket No. 2009-1250-PST-E PCW

Respondent JERRY SPENCER, L.P. dba JJS Fastop 294 Policy Revision 2 (September 2002)

Case ID No. 38089 PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102780103

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 115.246(5) and Tex Health & Safety Code § 382.085(b)

Violation Description Failed to maintain Stage II records at the Station. Specifically, Stage II vapor recovery test records were not available at the time of the investigation.

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 (25%).

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 12

- daily
weekly
monthly
quarterly
semiannual
annual
single event x

Violation Base Penalty \$2,500

One single event is recommended based on documentation of the violation during the June 12, 2009 investigation.

Good Faith Efforts to Comply 25.0% Reduction \$625

Table with columns: Extraordinary, Ordinary (x), N/A (mark with x)

Notes The Respondent achieved compliance on June 24, 2009, prior to the NOE dated June 30, 2009.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$1 Violation Final Penalty Total \$2,437

This violation Final Assessed Penalty (adjusted for limits) \$2,437

Economic Benefit Worksheet

Respondent JERRY SPENCER, L.P. dba JJS Fastop 294
Case ID No. 38089
Reg. Ent. Reference No. RN102780103
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
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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	12-Jun-2009	24-Jun-2009	0.03	\$1	n/a	\$1
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 of maintaining Stage II records at the Station. Date Required is the investigation date. Final Date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$1

Compliance History Report

Customer/Respondent/Owner-Operator: CN601412158 JERRY SPENCER, L.P. Classification: AVERAGE Rating: 1.00
Regulated Entity: RN102780103 JJS FASTOP 294 Classification: AVERAGE Site Rating: 1.00
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 75159
REGISTRATION

Location: 5401 WATAUGA RD, WATAUGA, TX, 76137

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: July 29, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 29, 2004 to July 29, 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.
Effective Date: 12/20/2008 ADMINORDER 2008-0960-PST-E
Classification: Moderate
Citation: 30 TAC Chapter 115, SubChapter C 115.245(1)
5C THSC Chapter 382 382.085(b)
Description: Failed to successfully complete all applicable tests required in the Vapor Recovery Test Procedures Handbook within 30 days of installation of the Stage II equipment.
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 03/05/2007 (542411)
2 04/01/2008 (638824)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 03/02/2007 (542411)
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.
- 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
JERRY SPENCER, L.P. D/B/A
JJS FASTOP 294;
RN102780103**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-1250-PST-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding JERRY SPENCER, L.P. d/b/a JJS Fastop 294 (“Jerry Spencer”) under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 382. The Executive Director of the TCEQ, represented by the Litigation Division, and Jerry Spencer, represented by Donald H. Grissom of the law firm Grissom & Thompson, L.L.P., appear before the Commission and together stipulate that:

1. Jerry Spencer owns and operates two underground storage tanks (“USTs”) and a convenience store with retail sales of gasoline located at 5401 Watauga Road, Watauga, Tarrant 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. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 382, and TCEQ rules.
3. The Commission and Jerry Spencer agree that the Commission has jurisdiction to enter this Agreed Order, and that Jerry Spencer is subject to the Commission’s jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Jerry Spencer of any violation alleged in Section II (“Allegations”), nor of any statute or rule.

5. An administrative penalty in the amount of twenty thousand two hundred dollars (\$20,200.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Jerry Spencer paid twenty thousand two hundred dollars (\$20,200.00) of the administrative penalty.
6. 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.
7. The Executive Director of the TCEQ and Jerry Spencer agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that Jerry Spencer implemented the following corrective measures at the Station in response to this enforcement action:
 - a. Submitted documentation demonstrating the replacement of the spill bucket for tank no. 1 on June 24, 2009; and
 - b. Began maintaining Stage II vapor recovery test records at the Station, as documented during a follow-up investigation on June 24, 2009.
9. 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 Jerry Spencer has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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

1. During an investigation conducted on June 12, 2009, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Jerry Spencer violated:
 - a. 30 TEX. ADMIN. CODE § 334.72(3) and (3)(B) by failing to report a suspected release to the agency within 24 hours of discovery. Specifically, regular unleaded inventory control records for August and September 2008 indicated a suspected release that was not reported;

- b. 30 TEX. ADMIN. CODE § 334.74 by failing to investigate a suspected release of regulated substances within 30 days of discovery. Specifically, inventory control records for August and September 2008 indicated a suspected release that was not investigated;
 - c. 30 TEX. ADMIN. CODE § 334.10(b) by failing to have the required UST records maintained, readily accessible, and made available for inspection upon request by agency personnel. Specifically, overfill prevention equipment documentation was not available;
 - d. 30 TEX. ADMIN. CODE § 334.51(b)(2)(B) and TEX. WATER CODE § 26.3475(c)(2) by failing to equip the UST system with a spill containment device designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container. Specifically, the spill bucket for tank no. 1 was cracked; and
 - e. 30 TEX. ADMIN. CODE § 115.246(5) and TEX. HEALTH & SAFETY CODE § 382.085(b) by failing to maintain Stage II records at the Station. Specifically, Stage II vapor recovery test records were not available at the time of the investigation.
2. Jerry Spencer received notice of the violations on or about July 5, 2009.

III. DENIALS

Jerry Spencer generally denies each Allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Jerry Spencer pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Jerry Spencer’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 considering or requiring corrective action or penalties for violations which 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: JERRY SPENCER, L.P. dba JJS Fastop 294, Docket No. 2009-1250-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. Jerry Spencer shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, Jerry Spencer shall:
 - i. Begin maintaining UST overfill prevention equipment records, in accordance with 30 TEX. ADMIN. CODE § 334.10;
 - ii. Establish and implement a process for investigating and reporting a suspected release, in accordance with 30 TEX. ADMIN. CODE § 334.72; and
 - iii. Conduct an investigation of the suspected release and implement appropriate corrective measures if required, in accordance with 30 TEX. ADMIN. CODE § 334.74.
- b. Within 75 days after the effective date of this Agreed Order, Jerry Spencer shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and 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.”

Jerry Spencer shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Sam Barrett, Waste Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon Jerry Spencer. Jerry Spencer is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
4. If Jerry Spencer 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, Jerry Spencer's failure to comply is not a violation of this Agreed Order. Jerry Spencer shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Jerry Spencer shall notify the Executive Director within seven days after Jerry Spencer becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Jerry Spencer shall be made in writing to the Executive Director. Extensions are not effective until Jerry Spencer receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Jerry Spencer 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.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall

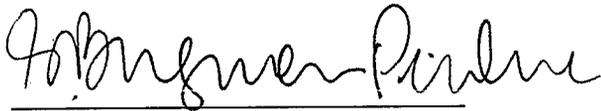
include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms “electronic transmission” “owner” “person” “writing” and “written” shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. 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 this Agreed Order to Jerry Spencer, or three days after the date on which the Commission mails notice of this Agreed Order to Jerry Spencer, 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



For the Executive Director

10/15/2010

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 JERRY SPENCER, L.P. d/b/a JJS Fastop 294, 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 Jerry Spencer's compliance history;
- Greater scrutiny of any permit applications submitted by Jerry Spencer;
- 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 Jerry Spencer;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Jerry Spencer; 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.



Signature

Jerry Spencer, President
JERRY SPENCER, L.P.

9-26-2010

Date