

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2010-0235-PST-E RN104793054 CASE NO. 39146**  
**RESPONDENT NAME: J N J OPERATIONS, INC. DBA ALVIN EXPRESS**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<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:** 680 Highway 35 Bypass North, Alvin, Brazoria County

**TYPE OF OPERATION:** convenience store with retail sales of gasoline

**SMALL BUSINESS:**  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 Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired October 11, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Mr. Keith Frank, Waste Enforcement Section, MC 128, (512) 239-1203

**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

**Respondent:** Mr. Niranjana S. Patel, President, J N J OPERATIONS, INC., 7039 Greatwood Trails Court, Sugar Land, Texas 77479

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> November 23, 2009</p> <p><b>Date of NOE Relating to this Case:</b> February 5, 2010</p> <p><b>Background Facts:</b> The EDPRP was filed on June 10, 2010. Respondent signed the Agreed Order on August 10, 2010.</p> <p><b>Current Compliance Status:</b> No outstanding Technical Requirements. Respondent's delivery certificate expires March 31, 2011.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to timely renew a previously issued Underground Storage Tank ("UST") delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the annual renewal date [30 TEX. ADMIN CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)].</li> <li>Failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs [30 TEX. ADMIN CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a)].</li> <li>Failed to maintain Stage II records at the Station [30 TEX. ADMIN CODE § 115.246(1), (3), (4), (5), (6) and (7)(A) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> <li>Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board ("CARB") Executive Order, and free of defects that would impair effectiveness of the system [30 TEX. ADMIN CODE § 115.242(3) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</li> </ol>	<p><b>Total Assessed:</b> \$3,035</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Paid/Due to General Revenue:</b> \$235/\$2,800</p> <p>Respondent paid \$235 of the administrative penalty. The remaining amount of \$2,800 shall be payable in 28 monthly payments of \$100 each.</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>The Executive Director recognizes that Respondent performed the following corrective actions at the Station:</p> <ol style="list-style-type: none"> <li>Submitted a properly completed UST registration and self-certification form to TCEQ on December 12, 2009;</li> <li>Obtained a TCEQ fuel delivery certificate on December 12, 2009;</li> <li>Submitted documentation to TCEQ on January 5, 2010, demonstrating that all Stage II records are being maintained at the Station; and</li> <li>Installed swivel adapters on the regular and super unleaded fill ports and dry breaks on December 21, 2009.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	8-Feb-2010	<b>Screening</b>	11-Feb-2010	<b>EPA Due</b>	
	<b>PCW</b>	9-May-2010				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	J N J OPERATIONS, INC. dba Alvin Express		
<b>Reg. Ent. Ref. No.</b>	RN104793054		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	39146	<b>No. of Violations</b>	4	
<b>Docket No.</b>	2010-0235-PST-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Government/Non-Profit</b>	No	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Keith Frank	
		<b>EC's Team</b>	Enforcement Team 7	
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$3,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$175
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<b>Notes</b>	Enhancement due to one previous NOV with same or similar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$750
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$119	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,425	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,925
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	3.8%	<b>Adjustment</b>	\$110
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Recommended enhancement to capture the avoided cost of compliance associated with violation no. 1.
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<b>Final Penalty Amount</b>	\$3,035
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$3,035
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<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$3,035
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**Screening Date** 11-Feb-2010

**Docket No.** 2010-0235-PST-E

**PCW**

**Respondent** J N J OPERATIONS, INC. dba Alvin Express

Policy Revision 2 (September 2002)

**Case ID No.** 39146

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN104793054

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Keith Frank

### 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)	1	5%
	Other written NOVs	0	0%
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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

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

No

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

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

Average Performer

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

>> **Compliance History Summary**

**Compliance History Notes** Enhancement due to one previous NOV with same or similar violations.

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

Screening Date 11-Feb-2010

Docket No. 2010-0235-PST-E

PCW

Respondent J N J OPERATIONS, INC. dba Alvin Express

Policy Revision 2 (September 2002)

Case ID No. 39146

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104793054

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Keith Frank

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii)

Violation Description Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the annual renewal date. Specifically, the prior UST delivery certificate expired on March 31, 2008.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 653 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction \$250

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

Notes The Respondent came into compliance on December 12, 2009 prior to the NOE dated February 5, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$114

Violation Final Penalty Total \$830

This violation Final Assessed Penalty (adjusted for limits) \$830

## Economic Benefit Worksheet

**Respondent** J N J OPERATIONS, INC. dba Alvin Express  
**Case ID No.** 39146  
**Reg. Ent. Reference No.** RN104793054  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	1-Mar-2009	12-Dec-2009	0.78	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to renew a delivery certificate by submitting a properly completed UST registration and self-certification form. Date Required is the beginning of the current year requiring a delivery certificate. 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]	\$100	28-Feb-2008	28-Feb-2009	1.92	\$10	\$100	\$110
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

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

Approx. Cost of Compliance

\$200

**TOTAL**

\$114

**Screening Date** 11-Feb-2010 **Docket No.** 2010-0235-PST-E **PCW**  
**Respondent** J N J OPERATIONS, INC. dba Alvin Express *Policy Revision 2 (September 2002)*  
**Case ID No.** 39146 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104793054  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Violation Number**   
**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" value="5%"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

**>> Programmatic Matrix**

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

**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	<input checked="" type="checkbox"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDRP/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** J N J OPERATIONS, INC. dba Alvin Express  
**Case ID No.** 39146  
**Reg. Ent. Reference No.** RN104793054  
**Media** Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic benefit included in violation no. 1.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

**Screening Date** 11-Feb-2010 **Docket No.** 2010-0235-PST-E **PCW**  
**Respondent** J N J OPERATIONS, INC. dba Alvin Express *Policy Revision 2 (September 2002)*  
**Case ID No.** 39146 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104793054  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Violation Number** 3  
**Rule Cite(s)** 30 Tex. Admin. Code § 115.246(1), (3), (4), (5), (6) and (7)(A) and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to maintain Stage II records at the Station. Specifically, a copy of the correct California Air Resources Board Executive Order for the Stage II vapor recovery system, maintenance records, employee training records, records of test results, and daily inspection records were not made immediately available for review at the time of the investigation.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

**>> Programmatic Matrix**

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 43 Number of violation days

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

**Violation Base Penalty** \$1,000

One single event is recommended.

**Good Faith Efforts to Comply** 25.0% Reduction \$250

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

**Notes** The Respondent came into compliance on January 5, 2010 prior to the NOE dated February 5, 2010.

**Violation Subtotal** \$750

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

**Estimated EB Amount** \$3 **Violation Final Penalty Total** \$830

**This violation Final Assessed Penalty (adjusted for limits)** \$830

## Economic Benefit Worksheet

**Respondent** J N J OPERATIONS, INC. dba Alvin Express  
**Case ID No.** 39146  
**Reg. Ent. Reference No.** RN104793054  
**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	\$500	23-Nov-2009	5-Jan-2010	0.12	\$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 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

\$3

**Screening Date** 11-Feb-2010 **Docket No.** 2010-0235-PST-E **PCW**  
**Respondent** J N J OPERATIONS, INC. dba Alvin Express *Policy Revision 2 (September 2002)*  
**Case ID No.** 39146 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN104793054  
**Media [Statute]** Petroleum Storage Tank  
**Enf. Coordinator** Keith Frank

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 115.242(3) and Tex. Health & Safety Code § 382.085(b)  
**Violation Description** Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, swivel adapters were not on the regular and super unleaded fill ports and dry breaks.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				10%
	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** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 28 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,000

One quarterly event is recommended based on documentation of the violation during the November 23, 2009 investigation to the December 21, 2009 compliance date.

**Good Faith Efforts to Comply** 25.0% Reduction \$250

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

**Notes** The Respondent came into compliance on December 21, 2009 prior to the NOE dated February 5, 2010.

**Violation Subtotal** \$750

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

**Estimated EB Amount** \$3

**Violation Final Penalty Total** \$830

**This violation Final Assessed Penalty (adjusted for limits)** \$830

## Economic Benefit Worksheet

**Respondent** J N J OPERATIONS, INC. dba Alvin Express  
**Case ID No.** 39146  
**Reg. Ent. Reference No.** RN104793054  
**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				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)	\$725	23-Nov-2009	21-Dec-2009	0.08	\$3	n/a	\$3

Notes for DELAYED costs

Actual cost to install swivel adapters on the regular and super unleaded fill ports as indicated on the invoice. 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

\$725

**TOTAL**

\$3

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603095142 J N J OPERATIONS, INC. Classification: Rating: 1.50  
Regulated Entity: RN104793054 Alvin Express Classification: Site Rating:  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 76318  
REGISTRATION  
Location: 680 HIGHWAY 35 BYP N, ALVIN, TX, 77511  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: February 10, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: February 10, 2005 to February 10, 2010

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

Name: Keith Frank Phone: (512) 239-1203

## 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: 9/1/2009 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 12/08/2005 | (437845) |
| 2 | 12/16/2005 | (440385) |
| 3 | 02/05/2010 | (789677) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 12/08/2005 (437845) CN603095142**
- Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 115, SubChapter C 115.246(6)  
Description: Failure to maintain a daily inspection log according to 115.244 (Inspection Requirements).
- Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 115, SubChapter C 115.244(3)  
Description: Failure to conduct a monthly inspection of the components listed in Section 115.242(3)(J). These components include any pressure/vacuum relief valves, and Stage I dry breaks.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 115, SubChapter C 115.246(7)(A)  
Description: Failure to maintain records on-site at facilities ordinarily manned during business hours, and made immediately available for review upon request
- Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 115, SubChapter C 115.246(3)  
Description: Failure to maintain a maintenance log for all repair/replacements conducted at the facility.
- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 115, SubChapter C 115.245(2)  
Description: Failure to conduct triennial system testing at the facility, in accordance with test procedures referenced in 115.245 (1).
- 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  
J N J OPERATIONS, INC. DBA  
ALVIN EXPRESS;  
RN104793054**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2010-0235-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding J N J OPERATIONS, INC. d/b/a Alvin Express ("Respondent") 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 Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates two underground storage tanks ("USTs") and a convenience store with retail sales of gasoline located at 680 Highway 35 Bypass North in Alvin, Brazoria County, Texas (the "Station"). Respondent's USTs 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 Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent 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 Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of three thousand thirty-five dollars (\$3,035.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid two hundred thirty-five dollars (\$235.00) of the administrative penalty. The remaining amount of two thousand eight hundred dollars (\$2,800.00) of the administrative penalty shall be payable in 28 monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his

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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

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 Respondent agree on a settlement of the matters addressed in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondent implemented the following corrective measures at the Station:
  - a. Submitted a properly completed UST registration and self-certification form to TCEQ on December 12, 2009;
  - b. Obtained a TCEQ fuel delivery certificate on December 12, 2009;
  - c. Submitted documentation to TCEQ on January 5, 2010, indicating that all Stage II records are being maintained at the Station; and
  - d. Installed swivel adapters on the regular and super unleaded fill ports and dry breaks on December 21, 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 Respondent 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 November 23, 2009, a TCEQ Houston Regional Office investigator documented that Respondent violated:
  - a. 30 TEX. ADMIN. CODE § 334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the annual renewal date. Specifically, Respondent's UST delivery certificate expired on March 31, 2008, due to Respondent's failure to submit a UST registration and self-certification form by March 1, 2008;

- b. 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, Respondent received one fuel delivery without a delivery certificate;
  - c. 30 TEX. ADMIN. CODE § 115.246(1), (3), (4), (5), (6) and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain Stage II records at the Station. Specifically, a copy of the correct California Air Resources Board ("CARB") Executive Order for the Stage II vapor recovery system, maintenance records, employee training records, records of test results, and daily inspection records were not on-site at the Station and available for review at the time of the investigation; and
  - d. 30 TEX. ADMIN. CODE § 115.242(3) and TEX. HEALTH & SAFETY CODE § 382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order, and free of defects that would impair the effectiveness of the system. Specifically, swivel adapters were not on the regular and super unleaded fill ports and dry breaks.
2. Respondent received notice of the violations on or about February 10, 2010.

### **III. DENIALS**

Respondent generally denies each Allegation in Section II.

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this 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: J N J OPERATIONS, INC. d/b/a Alvin Express, Docket No. 2010-0235-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 Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. If 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, Respondent's failure to comply is not a violation of this

Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against 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.
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 this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Attention - Kari L. GILBERTH Cheque # 2353

J N J OPERATIONS, INC. d/b/a Alvin Express  
Docket No. 2010-0235-PET-E  
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

*[Signature]*

9/29/2010

Date

For the Executive Director

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 failure to comply with the Ordering Provisions 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

*[Signature]*  
Signature: Niranjan S. Patel, President  
J N J OPERATIONS, INC.

9/10/10  
Date