

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 41466  
Soney Joseph DBA Race Runner 3  
RN101881233  
Docket No. 2011-0561-PST-E

**Order Type:**

Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

201 North Jackson Street, Jacksonville, Cherokee County

**Type of Operation:**

underground storage tank ("UST") system

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** August 3, 2012

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$20,608

**Total Paid to General Revenue:** \$588

**Total Due to General Revenue:** \$20,020

Payment Plan: 35 payments of \$572 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average

Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002

**Investigation Information**

**Complaint Date(s):** N/A

**Date(s) of Investigation:** February 14, 2011;

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

**Date(s) of NOE(s):** April 8, 2011

**Soney Joseph DBA Race Runner 3**

RN101881233

Docket No. 2011-0561-PST-E

**Violation Information**

1. Failed to ensure that a legible tag label, or marking with the tank number is permanently applied or affixed to either the top of the fill tube or a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST self-certification form violation [30 TEX. ADMIN. CODE § 334.8(c)(5)(C)].
2. Failed to inspect the impressed cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(2) and (c)(4) and TEX. WATER. CODE § 26.34759(d)].
3. Failed to investigate a suspected release within 30 days of discovery [30 TEX. ADMIN. CODE § 334.74].
4. Failed to report a suspected release within 24 hours of discovery [30 TEX. ADMIN. CODE § 334.72].

**Corrective Actions/Technical Requirements****Corrective Action(s) Completed:**

1. On April 24, 2011, provided pictures to show that a legible marking with the tank number is permanently applied to the top of each fill tube;
2. On April 19, 2011, provided documentation to demonstrate that the impressed current cathodic protection system and other system components had been inspected and tested;
3. On May 2, 2011, provided documentation to demonstrate that the suspected release was investigated; and
4. On May 1, 2011, provided document to demonstrate that the suspected release had been reported.

**Technical Requirements:**

N/A

**Litigation Information****Date Petition(s) Filed:** December 20, 2011;**Date Answer(s) Filed:** January 6, 2012**SOAH Referral Date:** February 8, 2012**Hearing Date(s):**

Preliminary hearing: March 22, 2012

Evidentiary hearing: July 26, 2012

**Settlement Date:** July 1, 2012**Contact Information****TCEQ Attorneys:** Jim Sallans, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
James Murphy, Public Interest Counsel, (512) 239-6363**TCEQ Enforcement Coordinator:** Bridgett Lee, Enforcement Division, (512) 239-2565**TCEQ Regional Contact:** Michael Brashear, Tyler Regional Office, (903) 535-5100**Respondent:** Soney Joseph, 201 North Jackson Street, Jacksonville, Texas 75766**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	Assigned	11-Apr-2011	Screening	11-Apr-2011	EPA Due	
	PCW	10-Oct-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>						
Respondent	Soney Joseph dba Race Runner 3					
Reg. Ent. Ref. No.	RN101881233					
Facility/Site Region	5-Tyler	Major/Minor Source	Minor			

<b>CASE INFORMATION</b>						
Enf./Case ID No.	41466	No. of Violations	4			
Docket No.	2011-0561-PST-E	Order Type	1660			
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Bridgett Lee			
		EC's Team	Enforcement Team 7			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000			

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$22,000</b>
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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>	<b>0.0%</b> Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$0</b>
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Notes: No adjustment for compliance history.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$2,200</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$1,232
Approx. Cost of Compliance	\$5,800

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$19,800</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>4.1%</b>	<b>Adjustment</b>	<b>\$808</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided costs associated with Violation Nos. 2 and 4.

<b>Final Penalty Amount</b>	<b>\$20,608</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$20,608</b>
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$20,608</b>
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**Screening Date** 11-Apr-2011

**Docket No.** 2011-0561-PST-E

**PCW**

**Respondent** Soney Joseph dba Race Runner 3

*Policy Revision 2 (September 2002)*

**Case ID No.** 41466

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101881233

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Bridgett Lee

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were 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)** 0%

**>> 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**

No adjustment for compliance history.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

Screening Date 11-Apr-2011

Docket No. 2011-0561-PST-E

PCW

Respondent Soney Joseph dba Race Runner 3

Policy Revision 2 (September 2002)

Case ID No. 41466

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101881233

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Bridgett Lee

Violation Number 1

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

Violation Description Failed to ensure that a legible tag, label, or marking with the tank number is permanently applied or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated underground storage tank ("UST") according to the UST registration and self-certification form.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (10%).

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 69 Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

Table with columns: Reduction (10.0%), Before NOV, NOV to EDPRP/Settlement Offer, Extraordinary, Ordinary, N/A.

\$100

Notes The Respondent came into compliance on April 24, 2011, after the Notice of Enforcement ("NOE") dated April 8, 2011.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$937

This violation Final Assessed Penalty (adjusted for limits) \$937

## Economic Benefit Worksheet

**Respondent** Soney Joseph dba Race Runner 3  
**Case ID No.** 41466  
**Req. Ent. Reference No.** RN101881233  
**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
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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)	\$100	14-Feb-2011	24-Apr-2011	0.19	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to label the tank fill ports. The date required is the investigation date. The 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

\$100

**TOTAL**

\$1

Screening Date 11-Apr-2011

Docket No. 2011-0561-PST-E

PCW

Respondent Soney Joseph dba Race Runner 3

Policy Revision 2 (September 2002)

Case ID No. 41466

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101881233

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Bridgett Lee

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(2) and (c)(4) and Tex. Water Code § 26.3475(d)

Violation Description Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly. Also, failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 \$7,500

\$2,500

Violation Events

Number of Violation Events 1 56 Number of violation days

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

Violation Base Penalty \$2,500

One quarterly event is recommended from the February 14, 2011 investigation date to the April 11, 2011 screening date.

Good Faith Efforts to Comply

10.0% Reduction

\$250

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

Notes The Respondent came into compliance on April 19, 2011 after to the NOE dated April 8, 2011.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$708

Violation Final Penalty Total \$2,342

This violation Final Assessed Penalty (adjusted for limits) \$2,342

## Economic Benefit Worksheet

**Respondent** Soney Joseph dba Race Runner 3  
**Case ID No.** 41466  
**Req. Ent. Reference No.** RN101881233  
**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

### 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	16-Dec-2010	19-Apr-2011	1.26	\$6	\$100	\$106
Other (as needed)	\$500	15-Feb-2008	13-Apr-2011	4.08	\$102	\$500	\$602

Notes for AVOIDED costs

Estimated avoided costs associated with failure to conduct the bi-monthly inspection (\$100) and completion of the triennial test (\$500). The dates required are 60 days and three years prior to the February 14, 2011, investigation date respectively. The final dates are the compliance dates.

Approx. Cost of Compliance

\$600

**TOTAL**

\$708

Screening Date 11-Apr-2011

Docket No. 2011-0561-PST-E

PCW

Respondent Soney Joseph dba Race Runner 3

Policy Revision 2 (September 2002)

Case ID No. 41466

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101881233

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Bridgett Lee

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.74

Violation Description Failed to investigate a suspected release within 30 days of discovery. Specifically, the automatic tank gauging equipment tests failed beginning July 23, 2009 through February 15, 2011.

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 pollutants which would 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 7 596 Number of violation days

mark only one with an x	daily		Violation Base Penalty \$17,500
	weekly		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

Seven quarterly events are recommended from the August 23, 2009 suspected release investigation due date to the April 11, 2011 screening date.

Good Faith Efforts to Comply

10.0% Reduction \$1,750

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

Notes The Respondent came into compliance on May 2, 2011 after the NOE dated April 8, 2011.

Violation Subtotal \$15,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$423 Violation Final Penalty Total \$16,393

This violation Final Assessed Penalty (adjusted for limits) \$16,393

## Economic Benefit Worksheet

**Respondent** Soney Joseph dba Race Runner 3  
**Case ID No.** 41466  
**Req. Ent. Reference No.** RN101881233  
**Media** Petroleum Storage Tank  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	23-Aug-2009	2-May-2011	1.69	\$423	n/a	\$423

Notes for DELAYED costs

Estimated cost to investigate the suspected releases. The date required is 30 days after the first date of the suspected release. The final date is the compliance date.

### 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**

\$423

Screening Date 11-Apr-2011

Docket No. 2011-0561-PST-E

PCW

Respondent Soney Joseph dba Race Runner 3

Policy Revision 2 (September 2002)

Case ID No. 41466

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101881233

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Bridgett Lee

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.72

Violation Description Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, the Respondent did not report a suspected release after receiving failed Automatic Tank Guage test results on July 23, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential			0%	

>> 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 1 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

10.0% Reduction \$100

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

Notes The Respondent came into compliance on May 1, 2011 after the NOE dated April 8, 2011.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$100

Violation Final Penalty Total \$937

This violation Final Assessed Penalty (adjusted for limits) \$937

## Economic Benefit Worksheet

**Respondent** Soney Joseph dba Race Runner 3  
**Case ID No.** 41466  
**Req. Ent. Reference No.** RN101881233  
**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
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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)				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]				0.00	\$0	\$0	\$0
Other (as needed)	\$100	23-Jul-2009	24-Jul-2009	0.00	\$0	\$100	\$100

Notes for AVOIDED costs

Estimated cost avoided by not reporting a suspected release. The date required is 24 hours after the date of the suspected release. The final date is the date the report was due.

Approx. Cost of Compliance

\$100

**TOTAL**

\$100

# Compliance History

Customer/Respondent/Owner-Operator: CN603559139 Joseph, Soney Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN101881233 Race Runner 3 Classification: AVERAGE Site Rating: 3.01  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 39135  
REGISTRATION  
Location: 201 N JACKSON ST, JACKSONVILLE, TX, 75766  
TCEQ Region: REGION 05 - TYLER  
Date Compliance History Prepared: April 11, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: April 11, 2006 to April 11, 2011

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

Name: Bridgett Lee Phone: (512) 239 - 2565

## 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: 9/1/2010 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 04/05/2011 (907645)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - 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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
SONEY JOSEPH DBA  
RACE RUNNER 3;  
RN101881233**

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

## **AGREED ORDER**

**DOCKET NO. 2011-0561-PST-E**

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

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Soney Joseph DBA Race Runner 3 ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Vance Metcalf of the law firm Kent, Good, Anderson & Bush, P.C., together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(73) and (70), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 201 North Jackson Street in Jacksonville, Cherokee County, Texas (the "Facility"). The USTs at the Facility 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.
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 and TCEQ rules.
3. The Executive Director 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 twenty thousand six hundred eight dollars (\$20,608.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid five hundred eighty-eight dollars (\$588.00) of the administrative penalty. The remaining amount of twenty thousand twenty dollars (\$20,020.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of five hundred seventy-two dollars (\$572.00) 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 and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
8. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
  - a. On April 24, 2011, provided pictures to show that a legible marking with the tank number is permanently applied to the top of each fill tube in accordance with 30 TEX. ADMIN. CODE § 334.8;
  - b. On April 19, 2011, provided documentation to demonstrate that the impressed current cathodic protection system and other system components had been inspected and tested in accordance with 30 TEX. ADMIN. CODE § 334.49;
  - c. On May 2, 2011, provided documentation to demonstrate that the suspected release was investigated in accordance with 30 TEX. ADMIN. CODE § 334.74; and
  - d. On May 1, 2011, provided document to demonstrate that the suspected release had been reported in accordance with 30 TEX. ADMIN. CODE § 334.72.
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 contained 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 February 14, 2011, a TCEQ Tyler Regional Office investigator documented that Respondent:

- a. Failed to ensure that a legible tag label, or marking with the tank number is permanently applied or affixed to either the top of the fill tube or a non-removable point in the immediate area of the fill tube for each regulated UST according to the UST self-certification form, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(C);
  - b. Failed to inspect the impressed cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and failed to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(2) and (c)(4) and TEX. WATER. CODE § 26.34759(d);
  - c. Failed to investigate a suspected release within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74. Specifically, Respondent did not investigate a suspected release after receiving failed automatic tank gauging test results beginning July 23, 2009 through February 15, 2011; and
  - d. Failed to report a suspected release within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72. Specifically, Respondent did not report a suspected release after receiving failed automatic tank gauge test results on July 23, 2009.
2. Respondent received notice of the violations on or about April 13, 2011.

### 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. 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 actions 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: Soney Joseph DBA Race Runner 3, Docket No. 2011-0561-PST-E" to:  

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088
2. All relief not expressly granted in this Agreed Order is denied.
3. 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 Facility operations referenced in this Agreed Order.

4. 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.
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 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.
6. 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.
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. Pursuant to 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 a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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

  
\_\_\_\_\_  
For the Executive Director

September 17, 2012  
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 Soney Joseph DBA Race Runner 3, 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 Agreed 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—Soney Joseph

07-01-12  
Date