

**Executive Summary – Enforcement Matter – Case No. 43272**  
**RACETRAC PETROLEUM, INC. dba Racetrac 423**  
**RN105683965**  
**Docket No. 2012-0074-PST-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PST

**Small Business:**

No

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

Racetrac 423, 4214 Forest Lane, Garland, Dallas County

**Type of Operation:**

Convenience store with retail sales of gasoline

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** April 13, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$7,658

**Amount Deferred for Expedited Settlement:** \$1,531

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$6,127

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - High

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002 and September 2011

**Executive Summary – Enforcement Matter – Case No. 43272  
RACETRAC PETROLEUM, INC. dba Racetrac 423  
RN105683965  
Docket No. 2012-0074-PST-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** December 16, 2011  
**Date(s) of NOE(s):** December 30, 2011

***Violation Information***

1. Failed to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Respondent did not conduct the triennial testing by the due date of July 28, 2011 [30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b)].
2. Failed to maintain Stage II records at the Station and make them immediately available for inspection upon request by agency personnel. Specifically, a record of the Stage II test results were not available for review [30 TEX. ADMIN. CODE § 115.246(5) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent has implemented the following corrective measures at the Station:

- a. Successfully conducted the triennial testing of the Stage II equipment on December 27, 2011; and
- b. Began maintaining all Stage II records at the Station on January 26, 2012.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Andrea Park, Enforcement Division,  
Enforcement Team 6, MC 128, (512) 239-4575; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412

**Executive Summary – Enforcement Matter – Case No. 43272**  
**RACETRAC PETROLEUM, INC. dba Racetrac 423**  
**RN105683965**  
**Docket No. 2012-0074-PST-E**

**TCEQ SEP Coordinator:** N/A

**Respondent:** Max McBrayer, Jr., Senior Vice President, RACETRAC PETROLEUM, INC., P.O. Box 105035, Atlanta, Georgia 30348-5035

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

|              |                 |            |                  |            |                |  |
|--------------|-----------------|------------|------------------|------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 3-Jan-2012 | <b>Screening</b> | 6-Jan-2012 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 6-Jan-2012 |                  |            |                |  |

|  |   |
|--|---|
| <b>RESPONDENT/FACILITY INFORMATION</b> |   |
| <b>Respondent</b>                      | RACETRAC PETROLEUM, INC. dba Racetrac 423 |
| <b>Reg. Ent. Ref. No.</b>              | RN105683965                               |
| <b>Facility/Site Region</b>            | 4-Dallas/Fort Worth                       |
| <b>Major/Minor Source</b>              | Major                                     |

|                          |                        |                              |                    |          |
|--------------------------|------------------------|------------------------------|--------------------|----------|
| <b>CASE INFORMATION</b>  |                        |                              |                    |          |
| <b>Enf./Case ID No.</b>  | 43272                  | <b>No. of Violations</b>     | 1                  |          |
| <b>Docket No.</b>        | 2012-0074-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>      | Andrea Park        |          |
|                          |                        | <b>EC's Team</b>             | Enforcement Team 6 |          |
| <b>Admin. Penalty \$</b> | <b>Limit Minimum</b>   | \$0                          | <b>Maximum</b>     | \$25,000 |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$3,750**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**  
 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.  
**Compliance History** **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

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

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$375**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**  
 Total EB Amounts \$3  
 Approx. Cost of Compliance \$500  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$3,375**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**  
Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$3,375**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$3,375**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$675**  
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$2,700**

Screening Date 6-Jan-2012

Docket No. 2012-0074-PST-E

PCW

Respondent RACETRAC PETROLEUM, INC. dba Racetrac 423

Policy Revision 3 (September 2011)

Case ID No. 43272

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105683965

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Andrea Park

### 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 Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

>> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 0%

Screening Date 6-Jan-2012

Docket No. 2012-0074-PST-E

PCW

Respondent RACETRAC PETROLEUM, INC. dba Racetrac 423

Policy Revision 3 (September 2011)

Case ID No. 43272

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105683965

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Andrea Park

Violation Number 1

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 and make them immediately available for inspection upon request by agency personnel. Specifically, a record of the Stage II test results were not available for review.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (15.0%). Matrix Notes: 100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 Number of violation days 21

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

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

Table for Good Faith Efforts: 10.0% Reduction, Before NOV, NOV to EDPRP/Settlement Offer.

\$375

Notes: The Respondent came into compliance on January 26, 2012, after the Notice of Enforcement dated December 30, 2011.

Violation Subtotal \$3,375

Economic Benefit (EB) for this violation

Estimated EB Amount \$3

Statutory Limit Test

Violation Final Penalty Total \$3,375

This violation Final Assessed Penalty (adjusted for limits) \$3,375

## Economic Benefit Worksheet

**Respondent** RACETRAC PETROLEUM, INC. dba Racetrac 423  
**Case ID No.** 43272  
**Req. Ent. Reference No.** RN105683965  
**Media** Petroleum Storage Tank  
**Violation No.** 1

|                         |                              |
|-------------------------|------------------------------|
| <b>Percent Interest</b> | <b>Years of Depreciation</b> |
| 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 | 16-Dec-2011 | 26-Jan-2012 | 0.11 | \$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. The date required is the investigation date and 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

\$500

**TOTAL**

\$3



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

|              |                 |            |                  |            |                |  |
|--------------|-----------------|------------|------------------|------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 3-Jan-2012 | <b>Screening</b> | 6-Jan-2012 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 6-Jan-2012 |                  |            |                |  |

|  |   |
|--|---|
| <b>RESPONDENT/FACILITY INFORMATION</b> |   |
| <b>Respondent</b>                      | RACETRAC PETROLEUM, INC. dba Racetrac 423 |
| <b>Reg. Ent. Ref. No.</b>              | RN105683965                               |
| <b>Facility/Site Region</b>            | 4-Dallas/Fort Worth                       |
| <b>Major/Minor Source</b>              | Major                                     |

|  |                        |                              |                    |
|--|------------------------|------------------------------|--------------------|
| <b>CASE INFORMATION</b>                |                        | <b>No. of Violations</b>     | 1                  |
| <b>Enf./Case ID No.</b>                | 43272                  | <b>Order Type</b>            | 1660               |
| <b>Docket No.</b>                      | 2012-0074-PST-E        | <b>Government/Non-Profit</b> | No                 |
| <b>Media Program(s)</b>                | Petroleum Storage Tank | <b>Enf. Coordinator</b>      | Andrea Park        |
| <b>Multi-Media</b>                     |                        | <b>EC's Team</b>             | Enforcement Team 6 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$0                    | <b>Maximum</b>               | \$10,000           |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

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

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts   
Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

**Screening Date** 6-Jan-2012

**Docket No.** 2012-0074-PST-E

**PCW**

**Respondent** RACETRAC PETROLEUM, INC. dba Racetrac 423

Policy Revision 2 (September 2002)

**Case ID No.** 43272

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN105683965

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Andrea Park

### 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 6-Jan-2012

Docket No. 2012-0074-PST-E

PCW

Respondent RACETRAC PETROLEUM, INC. dba Racetrac 423

Policy Revision 2 (September 2002)

Case ID No. 43272

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105683965

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Andrea Park

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 115.245(2) and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first. Specifically, the Respondent did not conduct the triennial testing by the due date of July 28, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       |
|-----------|-------|----------|-------|
|           | Major | Moderate | Minor |
| Actual    |       |          |       |
| Potential | x     |          |       |

Percent 50%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               |       |          |       |

Percent 0%

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

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1

141 Number of violation days

|              |   |
|--------------|---|
| daily        |   |
| weekly       |   |
| monthly      |   |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event | x |

mark only one with an x

Violation Base Penalty \$5,000

One single event is recommended for the period preceding the December 16, 2011 investigation.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

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

Notes The Respondent came into compliance on December 27, 2011, prior to the Notice of Enforcement dated December 30, 2011.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$533

Violation Final Penalty Total \$4,283

This violation Final Assessed Penalty (adjusted for limits) \$4,283

## Economic Benefit Worksheet

**Respondent** RACETRAC PETROLEUM, INC. dba Racetrac 423  
**Case ID No.** 43272  
**Req. Ent. Reference No.** RN105683965  
**Media 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   |
| <b>ONE-TIME avoided costs [3]</b> | \$500 | 28-Jul-2011 | 27-Dec-2011 | 1.33 | \$33 | \$500 | \$533 |
| Other (as needed)                 |       |             |             | 0.00 | \$0  | \$0   | \$0   |

Notes for AVOIDED costs

Estimated avoided cost for triennial testing of the Stage II equipment. The date required is the test due date and the final date is the compliance date.

Approx. Cost of Compliance

\$500

**TOTAL**

\$533

# Compliance History

|   |                                      |                          |                         |                   |
|---|--------------------------------------|--------------------------|-------------------------|-------------------|
| Customer/Respondent/Owner-Operator:           | CN600505283                          | RACETRAC PETROLEUM, INC. | Classification: AVERAGE | Rating: 2.24      |
| Regulated Entity:                             | RN105683965                          | Racetrac 423             | Classification: HIGH    | Site Rating: 0.00 |
| ID Number(s):                                 | PETROLEUM STORAGE TANK REGISTRATION  |                          | REGISTRATION            | 79400             |
| Location:                                     | 4214 FOREST LN, GARLAND, TX, 75042   |                          |                         |                   |
| TCEQ Region:                                  | REGION 04 - DFW METROPLEX            |                          |                         |                   |
| Date Compliance History Prepared:             | January 06, 2012                     |                          |                         |                   |
| Agency Decision Requiring Compliance History: | Enforcement                          |                          |                         |                   |
| Compliance Period:                            | January 06, 2007 to January 06, 2012 |                          |                         |                   |

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

Name: Andrea Park Phone: (512) 239-4575

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? **NO**
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. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 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 07/13/2011 (906070)  
2 12/30/2011 (975191)
  - 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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
RACETRAC PETROLEUM, INC.  
DBA RACETRAC 423  
RN105683965**

§  
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§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2012-0074-PST-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding RACETRAC PETROLEUM, INC. dba Racetrac 423 ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a convenience store with retail sales of gasoline at 4214 Forest Lane in Garland, Dallas County, Texas (the "Station").
2. The Station consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 4, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Six Hundred Fifty-Eight Dollars (\$7,658) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Six Thousand One Hundred Twenty-Seven Dollars (\$6,127) of the administrative penalty and One Thousand Five Hundred Thirty-One Dollars (\$1,531) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Station:
  - a. Successfully conducted the triennial testing of the Stage II equipment on December 27, 2011; and
  - b. Began maintaining all Stage II records at the Station on January 26, 2012.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Station, the Respondent is alleged to have:

1. Failed to verify proper operation of the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first, in violation of 30 TEX. ADMIN. CODE § 115.245(2) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on December 16, 2011. Specifically, the Respondent did not conduct the triennial testing by the due date of July 28, 2011.
2. Failed to maintain Stage II records at the Station and make them immediately available for inspection upon request by agency personnel, in violation of 30 TEX. ADMIN. CODE §

115.246(5) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on December 16, 2011. Specifically, a record of the Stage II test results were not available for review.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: RACETRAC PETROLEUM, INC. dba Racetrac 423, Docket No. 2012-0074-PST-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. 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.

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

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*Pam Dorman*  
For the Executive Director

5/16/12  
Date

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

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

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

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

*Max McBrayer, Jr.* ✓  
Signature

2/20/12  
Date

Max McBrayer, Jr.  
Name (Printed or typed)

Senior Vice President  
Title

Authorized Representative of  
RACETRAC PETROLEUM, INC. dba Racetrac 423

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