

**Executive Summary – Enforcement Matter – Case No. 60104
Joseph Gaber dba Cody's Market
RN101230654
Docket No. 2020-1500-PST-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Cody's Market, 5105 New Tin Top Road, Weatherford, Parker County

Type of Operation:

Underground storage tank ("UST") system and a 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: August 25, 2023

Comments Received: No

Penalty Information

Total Penalty Assessed: \$14,677

Amount Deferred for Expedited Settlement: \$2,935

Total Paid to General Revenue: \$332

Total Due to General Revenue: \$11,410

Payment Plan: 35 payments of \$326 each

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: September 29, 2020

Date(s) of NOE(s): November 20, 2020

Executive Summary – Enforcement Matter – Case No. 60104
Joseph Gaber dba Cody's Market
RN101230654
Docket No. 2020-1500-PST-E

Violation Information

1. Failed to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days [TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A)].
2. Failed to report a suspected release to TCEQ within 24 hours of discovery. Specifically, inventory control records for Tanks 1 and 3 (manifolded together, regular unleaded gasoline) from March and April 2020 showed the monthly over/short was not within the allowable limit, indicating a suspected release that was not reported [30 TEX. ADMIN. CODE § 334.72].
3. Failed to report a suspected release to TCEQ within 72 hours of discovery. Specifically, statistical inventory reconciliation (“SIR”) records for Tanks 1 and 3 (manifolded together, regular unleaded gasoline) were inconclusive for March, April, and June 2020, indicating suspected releases that were not reported [30 TEX. ADMIN. CODE § 334.50(d)(9)(A)(v)].
4. Failed to investigate and confirm all suspected releases of regulated substances within 30 days. Specifically, inventory control records for Tanks 1 and 3 (manifolded together, regular unleaded gasoline) from March and April 2020 showed the monthly over/short was not within the allowable limit, indicating a suspected release that was not investigated. Additionally, SIR records for Tanks 1 and 3 were inconclusive for March, April, and June 2020, indicating suspected releases that were not investigated [30 TEX. ADMIN. CODE § 334.74].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days:
 - i. Implement a release detection method for the USTs;
 - ii. Develop and implement a process for timely reporting suspected releases; and
 - iii. Conduct an investigation of the suspected releases, including the suspected releases indicated by the inventory control records for Tanks 1 and 3 from March and April 2020 and by the SIR records for Tanks 1 and 3 for March, April, and June 2020, and implement appropriate corrective measures.

**Executive Summary – Enforcement Matter – Case No. 60104
Joseph Gaber dba Cody's Market
RN101230654
Docket No. 2020-1500-PST-E**

b. Within 45 days, submit written certification to demonstrate compliance with a.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Karolyn Kent, Enforcement Division, Enforcement Team 3, MC 219, (512) 239-2536; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Joseph Gaber, Owner, Cody's Market, 5105 New Tin Top Road, Weatherford, Texas 76087-7458

Respondent's Attorney: William J. Brotherton, Attorney, Brotherton Law Firm, 2340 Farm-to-Market Road 407, Suite 200, Highland Village, Texas 75077-3070



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	23-Nov-2020	Screening	25-Nov-2020	EPA Due	
	PCW	25-Nov-2020				

RESPONDENT/FACILITY INFORMATION	
Respondent	Joseph Gaber dba Cody's Market
Reg. Ent. Ref. No.	RN101230654
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	60104	No. of Violations	3
Docket No.	2020-1500-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Karolyn Kent
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$16,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	-10.0%	Adjustment	Subtotals 2, 3, & 7	-\$1,625
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Notes	Reduction for High Performer Classification.
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$199	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$2,650	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$14,625
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.4%	Adjustment	\$52
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance associated with Violation No. 2.
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Final Penalty Amount	\$14,677
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$14,677
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DEFERRAL	20.0%	Reduction	Adjustment	-\$2,935
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.
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PAYABLE PENALTY	\$11,742
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Screening Date 25-Nov-2020

Docket No. 2020-1500-PST-E

PCW

Respondent Joseph Gaber dba Cody's Market

Policy Revision 4 (April 2014)

Case ID No. 60104

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101230654

Media Petroleum Storage Tank

Enf. Coordinator Karolyn Kent

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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 judgments 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%
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)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 25-Nov-2020 **Docket No.** 2020-1500-PST-E **PCW**
Respondent Joseph Gaber dba Cody's Market *Policy Revision 4 (April 2014)*
Case ID No. 60104 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN101230654
Media Petroleum Storage Tank
Enf. Coordinator Karolyn Kent

Violation Number 1
Rule Cite(s) 30 Tex. Admin. Code § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1)
Violation Description Failed to monitor the underground storage tanks ("USTs") for releases in a manner which will detect a release at a frequency of at least once every 30 days.
Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				15.0%
	Potential	X			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1 57 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended from the September 29, 2020 investigation date to the November 25, 2020 screening date.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal \$3,750

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

Estimated EB Amount \$73 **Violation Final Penalty Total** \$3,387

This violation Final Assessed Penalty (adjusted for limits) \$3,387

Economic Benefit Worksheet

Respondent Joseph Gaber dba Cody's Market
Case ID No. 60104
Reg. Ent. Reference No. RN101230654
Media Violation No. Petroleum Storage Tank
 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	29-Sep-2020	19-Sep-2021	0.97	\$73	n/a	\$73

Notes for DELAYED costs

Estimated delayed cost to implement a release detection method for the USTs at the Facility. The Date Required is the investigation date, and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$73

Screening Date 25-Nov-2020

Docket No. 2020-1500-PST-E

PCW

Respondent Joseph Gaber dba Cody's Market

Policy Revision 4 (April 2014)

Case ID No. 60104

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101230654

Media Petroleum Storage Tank

Enf. Coordinator Karolyn Kent

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 334.72 and 334.50(d)(9)(A)(v)

Violation Description Failed to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, inventory control ("IC") records for Tanks 1 and 3 (manifolded together, regular unleaded gasoline) from March and April 2020 showed the monthly over/short was not within the allowable limit, indicating a suspected release that was not reported. In addition, failed to report a suspected release to the TCEQ within 72 hours of discovery. Specifically, statistical inventory reconciliation ("SIR") records for Tanks 1 and 3 (manifolded together, regular unleaded gasoline) were inconclusive for March, April, and June 2020, indicating suspected releases that were not reported.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 Number of violation days 236

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$57

Violation Final Penalty Total \$1,129

This violation Final Assessed Penalty (adjusted for limits) \$1,129

Economic Benefit Worksheet

Respondent Joseph Gaber dba Cody's Market
Case ID No. 60104
Reg. Ent. Reference No. RN101230654
Media Violation No. Petroleum Storage Tank
 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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	29-Sep-2020	19-Sep-2021	0.97	\$5	n/a	\$5

Notes for DELAYED costs

Estimated delayed cost to establish and implement a process for timely reporting of suspected releases. The Date Required is the investigation date, and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs	\$25	3-Apr-2020	25-Nov-2020	0.65	\$1	\$25	\$26
Other (as needed)	\$25	1-May-2020	25-Nov-2020	0.57	\$1	\$25	\$26

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. The Dates Required are the dates the earliest suspected releases for the SIR and IC reports should have been reported, respectively, and the Final Dates are the screening date.

Approx. Cost of Compliance \$150

TOTAL \$57

Screening Date 25-Nov-2020
Respondent Joseph Gaber dba Cody's Market
Case ID No. 60104
Reg. Ent. Reference No. RN101230654
Media Petroleum Storage Tank
Enf. Coordinator Karolyn Kent

Docket No. 2020-1500-PST-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Violation Number 3

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

Violation Description

Failed to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 Tex. Admin. Code § 334.72 (relating to Reporting of Suspected Releases) within 30 days. Specifically, IC records for Tanks 1 and 3 (manifolded together, regular unleaded gasoline) from March and April 2020 showed the monthly over/short was not within the allowable limit, indicating a suspected release that was not investigated. Additionally, SIR records for Tanks 1 and 3 were inconclusive for March, April, and June 2020, indicating suspected releases that were not investigated.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3

209 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three quarterly events are recommended from the earliest suspected release investigation due date of April 30, 2020 to the November 25, 2020 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	

Notes

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

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$69

Violation Final Penalty Total \$10,161

This violation Final Assessed Penalty (adjusted for limits) \$10,161

Economic Benefit Worksheet

Respondent Joseph Gaber dba Cody's Market
Case ID No. 60104
Reg. Ent. Reference No. RN101230654
Media Violation No. Petroleum Storage Tank
 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	30-Apr-2020	19-Sep-2021	1.39	\$69	n/a	\$69

Notes for DELAYED costs

Estimated delayed cost to conduct an investigation of the suspected releases and implement appropriate corrective measures. This is determined by \$400 for testing per (tank + line), and \$600 for the suspected Release Determination Report. The Date Required is the date the earliest suspected release investigation was due, and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$69

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN602870552, RN101230654, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN602870552, Gaber, Joseph **Classification:** HIGH **Rating:** 0.00
Regulated Entity: RN101230654, Cody's Market **Classification:** HIGH **Rating:** 0.00
Complexity Points: 5 **Repeat Violator:** NO
CH Group: 14 - Other
Location: 5105 New Tin Top Road, Weatherford, Parker County, Texas 76087-7458
TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):

PUBLIC WATER SYSTEM/SUPPLY REGISTRATION
1840144

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 6615

LEAKING PETROLEUM STORAGE TANKS REMEDIATION
ID NUMBER 117040

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: February 01, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: February 01, 2016 to February 01, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Karolyn Kent

Phone: (512) 239-2536

Site and Owner/Operator History:

- 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):
A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.
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
JOSEPH GABER
DBA CODY'S MARKET;
RN101230654

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2020-1500-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Joseph Gaber dba Cody's Market ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Respondent, represented by William J. Brotherton of the law firm Brotherton Law Firm, together stipulate that:

1. Respondent owns and operates, as defined in 30 TEX. ADMIN. CODE § 334.2(78) and (75), an underground storage tank ("UST") system and a convenience store with retail sales of gasoline located at 5105 New Tin Top Road in Weatherford, Parker County, Texas (Facility ID No. 6615) (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 they contain or contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of fourteen thousand six hundred seventy-seven dollars (\$14,677.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three hundred thirty-two dollars (\$332.00) of the penalty and two thousand nine hundred thirty-five dollars (\$2,935.00) is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions of this Order.

The remaining amount of eleven thousand four hundred ten dollars (\$11,410.00) of the undeferred penalty shall be paid in thirty-five (35) monthly payments of three hundred twenty-six dollars (\$326.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may 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 Order or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms

of this Order and the Executive Director may demand payment of all or part of the deferred penalty amount.

5. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). 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.
6. 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 Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon full compliance with all the terms and conditions set forth in this Order, whichever is later.

II. ALLEGATIONS

1. During an investigation conducted on September 29, 2020, an investigator documented that Respondent:
 - a. Failed to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days, in violation of TEX. WATER CODE § 26.3475(c)(1) and 30 TEX. ADMIN. CODE § 334.50(b)(1)(A);
 - b. Failed to report a suspected release to TCEQ within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72. Specifically, inventory control ("IC") records for Tanks 1 and 3 (manifolded together, regular unleaded gasoline) from March and April 2020 showed the monthly over/short was not within the allowable limit, indicating a suspected release that was not reported;
 - c. Failed to report a suspected release to TCEQ within 72 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(9)(A)(v). Specifically, statistical inventory reconciliation ("SIR") records for Tanks 1 and 3 (manifolded together, regular unleaded gasoline) were inconclusive for March, April, and June 2020, indicating suspected releases that were not reported; and
 - d. Failed to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TEX. ADMIN. CODE § 334.72 (relating to Reporting of Suspected Releases) within 30 days, in violation of 30 TEX. ADMIN. CODE § 334.74. Specifically, IC records for Tanks 1 and 3 (manifolded together, regular unleaded gasoline) from March and April 2020 showed the monthly over/short was not within the allowable limit, indicating a suspected release that was not investigated. Additionally, SIR records for Tanks 1 and 3 were inconclusive for March, April, and June 2020, indicating suspected releases that were not investigated.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondent's compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: Joseph Gaber dba Cody's Market, Docket No. 2020-1500-PST-E" to:

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

2. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order:
 - i. Implement a release detection method for the USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - ii. Develop and implement a process for timely reporting suspected releases, in accordance with 30 TEX. ADMIN. CODE §§ 334.50 and 334.72; and
 - iii. Conduct an investigation of the suspected releases, including the suspected releases indicated by the IC records for Tanks 1 and 3 from March and April 2020 and by the SIR records for Tanks 1 and 3 for March, April, and June 2020, and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74.
 - b. Within 45 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.iii. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The written certification and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

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

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this 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. Extension requests shall be sent to the Enforcement Division at the address listed above.
6. If Respondent fails to comply with any of the Ordering Provisions in this 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 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.
7. This 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 Order, or (2) pursue violations of a statute within TCEQ's jurisdiction or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

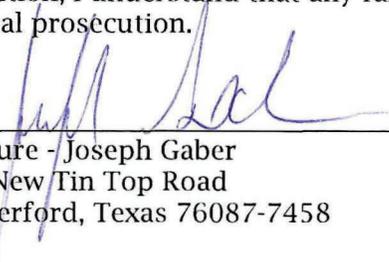
9/6/2023
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, 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 - Joseph Gaber
5105 New Tin Top Road
Weatherford, Texas 76087-7458

7-5-23
Date

If mailing address has changed, please check this box and provide the new address below:
