

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0233-IHW-E TCEQ ID: RN100701507 CASE NO.: 35343**  
**RESPONDENT NAME: XKLEN CORPORATION**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 7650 County Road 48, Suite F, Rosharon, Brazoria County</p> <p><b>TYPE OF OPERATION:</b> Hazardous waste transporter</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on July 14, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Michael Meyer, Waste Enforcement Section, MC 128, (512) 239-4492  <b>TCEQ Regional Contact:</b> Ms. Nicole Bealle, Beaumont Regional Office, MC R-10, (713) 767-3623  <b>Respondent:</b> Mr. Thomas Grant III, President, Xklen Corporation, 1450 West Grand Parkway South, Ste. G, Katy, Texas 77494-8287  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> September 26, 2007</p> <p><b>Date of NOE Relating to this Case:</b> January 11, 2008</p> <p><b>Background Facts:</b></p> <p>The EDPRP was filed on April 22, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on April 24, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>IHW:</b></p> <ol style="list-style-type: none"> <li>1. Failed to prevent the unauthorized storage and processing of wastes transported to the Facility [30 TEX. ADMIN. CODE § 335.2(b)].</li> <li>2. Failed to use manifests for the transportation of hazardous waste or Class I waste. [30 TEX. ADMIN. CODE §§ 335.12(a) and 335.14(a)].</li> <li>3. Failed to update its Notice of Registration with changes or additional information concerning waste management or waste composition [30 TEX. ADMIN. CODE § 335.6].</li> </ol>	<p><b>Total Assessed:</b> \$13,000</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$13,000</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p>The Executive Director recognizes that the Facility ceased operation in June 2007.</p>



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision January 29, 2008

<b>DATES</b>	Assigned	14-Jan-2008	Screening	30-Jan-2008	EPA Due	
	PCW	5-Feb-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Xklen Corporation		
Reg. Ent. Ref. No.	RN100701507		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	35343	No. of Violations	3	
Docket No.	2008-0233-IHW-E	Order Type	1660	
Media Program(s)	Industrial and Hazardous Waste	Enf. Coordinator	Michael Meyer	
Multi-Media		EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

<b>Penalty Calculation Section</b>	
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b> <input type="text" value="\$13,000"/>

<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
<b>Compliance History</b>	0% Enhancement <b>Subtotals 2, 3, &amp; 7</b> <input type="text" value="\$0"/>

Notes: There were no NOV's or orders for same or similar violations during the previous five years.

<b>Culpability</b>	No	0% Enhancement	<b>Subtotal 4</b>	<input type="text" value="\$0"/>
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply</b>	0% Reduction	<b>Subtotal 5</b>	<input type="text" value="\$0"/>
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)
Notes	The Respondent does not meet the good faith criteria.	

	0% Enhancement*	<b>Subtotal 6</b>	<input type="text" value="\$0"/>
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Total EB Amounts    
 Approx. Cost of Compliance    
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<input type="text" value="\$13,000"/>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0%	<b>Adjustment</b>	<input type="text" value="\$0"/>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount**

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<input type="text" value="\$13,000"/>
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<b>DEFERRAL</b>	0%	Reduction	<b>Adjustment</b>	<input type="text" value="\$0"/>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<input type="text" value="\$13,000"/>
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Screening Date 30-Jan-2008

Docket No. 2008-0233-IHW-E

PCW

Respondent Xklen Corporation

Policy Revision 2 (September 2002)

Case ID No. 35343

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN100701507

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

**Compliance History Worksheet**

>> Compliance History Site Enhancement (Subtotal 2)

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

Please Enter Yes or No

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

There were no NOVs or orders for same or similar violations during the previous five years.

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

<b>Screening Date</b> 30-Jan-2008	<b>Docket No.</b> 2008-0233-IHW-E	<b>PCW</b>
<b>Respondent</b> Xklen Corporation		<small>Policy Revision 2 (September 2002)</small>
<b>Case ID No.</b> 35343		<small>PCW Revision January 29, 2008</small>
<b>Reg. Ent. Reference No.</b> RN100701507		
<b>Media [Statute]</b> Industrial and Hazardous Waste		
<b>Enf. Coordinator</b> Michael Meyer		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 335.2(b)"/>	
<b>Violation Description</b>	Failed to prevent the unauthorized storage and processing of wastes transported to the Respondent's Facility from off-site generators, as documented during an investigation conducted on September 26, 2007. Specifically, the Respondent transported spent Naptha 142 waste to its transfer facility located at 7650F County Road 48 North in Rosharon, Brazoria County as evidenced by bills of lading from an off-site generator dated March 10, April 26, June 15 and October 24, 2006. The wastes were consolidated in a batch process and then transferred to a used oil processing facility.	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>

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

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

**>> Programmatic Matrix**

	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
	Matrix Notes: <input type="text" value="100 percent of the rule requirement was not met."/>				
	<b>Adjustment</b>				<input type="text" value="\$9,000"/>

**Violation Events**

Number of Violation Events	<input type="text" value="8"/>		Number of violation days	<input type="text" value="228"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	<b>Violation Base Penalty</b>	<input type="text" value="\$8,000"/>	
	monthly	x			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
Eight monthly events, from the March 10, 2006 bill of lading to the October 24, 2006 bill of lading, are recommended.					

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount	<input type="text" value="\$2,154"/>
	<b>Violation Final Penalty Total</b> <input type="text" value="\$8,000"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$8,000"/>	

## Economic Benefit Worksheet

**Respondent** Xklen Corporation  
**Case ID No.** 35343  
**Reg. Ent. Reference No.** RN100701507  
**Media** Industrial and Hazardous Waste  
**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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$2,000	10-Mar-2006	24-Oct-2006	1.5	\$154	\$2,000	\$2,154
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain authorization to receive, store, and process hazardous waste. The Date Required is the date of the first bill of lading dated March 10, 2006 and the Final Date is the last bill of lading, dated October 24, 2006.

Approx. Cost of Compliance

\$2,000

**TOTAL**

\$2,154

Screening Date 30-Jan-2008 Respondent XKlen Corporation Case ID No. 35343 Reg. Ent. Reference No. RN100701507 Media [Statute] Industrial and Hazardous Waste Enf. Coordinator Michael Meyer Violation Number <input type="text" value="2"/> Rule Cite(s) <input type="text" value="30 Tex. Admin. Code §§ 335.12(a) and 335.14(a)"/> Violation Description <input type="text" value="Failed to use manifests for the transportation of hazardous waste or Class I waste received from off-site generators, as documented during an investigation conducted on September 26, 2007. Specifically, the Respondent transported four shipments of spent Naptha 142 waste from an off-site generator as evidenced by copies of the bill of lading from the off-site generator dated March 10, April 26, June 15 and October 24, 2006."/>	Docket No. 2008-0233-IHW-E PCW Policy Revision 2 (September 2002) PCW Revision January 29, 2008 Base Penalty <input type="text" value="\$10,000"/>
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>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	
					Percent <input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100 percent of the rule requirement was not met."/>				

Adjustment

Violation Events

Number of Violation Events        Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$131"/>	Violation Final Penalty Total <input type="text" value="\$4,000"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$4,000"/>	

## Economic Benefit Worksheet

**Respondent** Xklen Corporation  
**Case ID No.** 35343  
**Reg. Ent. Reference No.** RN100701507  
**Media** Industrial and Hazardous Waste  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$200	10-Mar-2006	24-Oct-2006	0.6	\$6	\$125	\$131
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to ensure manifests were used for the four shipments of spent Naptha waste. The Date Required is the date of the initial shipment and the Final Date is the date of the final shipment.

Approx. Cost of Compliance

\$200

**TOTAL**

\$131

Screening Date 30-Jan-2008 Respondent Xklen Corporation Case ID No. 35343 Reg. Ent. Reference No. RN100701507 Media [Statute] Industrial and Hazardous Waste Enf. Coordinator Michael Meyer Violation Number <input type="text" value="3"/> Rule Cite(s) <input type="text" value="30 Tex. Admin. Code § 335.6"/> Violation Description <input type="text" value="Failed to update its Notice of Registration of changes or additional information concerning waste management or waste composition, as documented during an investigation conducted on September 26, 2007. Specifically, the Respondent failed to: 1) register as a transfer facility; 2) register as a Class 1 generator; 3) to add plant refuse and sludge stream as waste streams on its NOR; and 4) to add the plant refuse bin and container storage area as waste management units."/>	Docket No. 2008-0233-IHW-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision January 29, 2008</i>
Base Penalty <input type="text" value="\$10,000"/>	

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events        Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>	

Violation Base Penalty

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$32"/>	Violation Final Penalty Total <input type="text" value="\$1,000"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,000"/>	

## Economic Benefit Worksheet

**Respondent** XKlen Corporation  
**Case ID No.** 35343  
**Reg. Ent. Reference No.** RN100701507  
**Media** Industrial and Hazardous Waste  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$250	10-Mar-2006	15-Sep-2008	2.5	\$32	n/a	\$32
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update the Facility's Notice of Registration. The Date Required is the date of the March 10, 2006 bill of lading, indicating the Respondent was transporting waste to a transfer facility for storage, treatment and disposal without authorization. The Final Date is the projected compliance date.

### Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

**TOTAL**

\$32

# Compliance History

Customer/Respondent/Owner-Operator: CN600403026 Xklen Corporation Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN100701507 XKLEN Classification: Site Rating:  
ID Number(s):  
Location: 7650 COUNTY ROAD 48 STE F, ROSHARON, TX, 77583  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: January 23, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 24, 2003 to January 23, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Michael Meyer Phone: (512) 239-4492

## 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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, 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 01/11/2008 (596541)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- 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  
XKLEN CORPORATION;  
RN100701507

§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## DEFAULT ORDER DOCKET NO. 2008-0233-IHW-E

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Xklen Corporation ("Xklen").

The Commission makes the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. Xklen owned and operated a hazardous waste transportation service located at 7650 County Road 48, Suite F, Rosharon, Brazoria County, Texas (the "Facility").
2. The Facility involved the transportation and management of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During a record review conducted on September 26, 2007, a TCEQ Houston Regional Office investigator documented that Xklen:
  - a. Failed to prevent the unauthorized storage and processing of wastes transported to the Facility. Specifically, as evidenced by bills of lading from an off-site generator dated March 10, April 26, June 15 and October 24, 2006, Xklen transported unauthorized spent Naptha 142 waste to the Facility. The unauthorized waste was consolidated in a batch process and then transferred to a used oil processing facility;
  - b. Failed to use manifests for the transportation of hazardous waste or Class I waste. Specifically, as evidenced by copies of bills of lading from an off-site generator dated March 10, April 26, June 15 and October 24, 2006, Xklen transported four unmanifested shipments of spent Naptha 142 waste from an off-site generator; and

- c. Failed to update its Notice of Registration ("NOR") with changes or additional information concerning waste management or waste composition. Specifically, Xklen failed to: 1) register as a transfer facility; 2) register as a Class I generator; 3) add plant refuse and sludge stream as waste streams on its NOR; and 4) add the plant refuse bin and container storage area as waste management units.
4. Xklen received notice of the violations on or about January 16, 2008.
5. The Executive Director recognizes that the Facility ceased operation in June 2007.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Xklen Corporation" (the "EDPRP") in the TCEQ Chief Clerk's office on April 22, 2008.
7. By letter dated April 22, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Xklen with notice of the EDPRP. According to the return receipt "green card," Xklen received notice of the EDPRP on April 24, 2008, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Xklen received notice of the EDPRP, provided by the Executive Director. Xklen failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Xklen is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Xklen failed to prevent the unauthorized storage and processing of wastes transported to the Facility, in violation of 30 TEX. ADMIN. CODE § 335.2(b).
3. As evidenced by Finding of Fact No. 3.b., Xklen failed to use manifests for the transportation of hazardous waste or Class I waste, in violation of 30 TEX. ADMIN. CODE §§ 335.12(a) and 335.14(a).

4. As evidenced by Finding of Fact No. 3.c., Xklen failed to update its Notice of Registration with changes or additional information concerning waste management or waste composition, in violation of 30 TEX. ADMIN. CODE § 335.6.
5. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Xklen with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 8, Xklen failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Xklen and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Xklen for violations of statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of thirteen thousand dollars (\$13,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### **ORDERING PROVISIONS**

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

1. Xklen is assessed an administrative penalty in the amount of thirteen thousand dollars (\$13,000.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Xklen's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Xklen Corporation; Docket No. 2008-0233-IHW-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Xklen.
4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Xklen if the Executive Director determines that Xklen has not complied with one or more of the terms or conditions in this Order.
5. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
6. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T. CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF LENA ROBERTS**

STATE OF TEXAS           §  
                                          §  
COUNTY OF TRAVIS       §

“My name is Lena Roberts. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Xklen Corporation” (the “EDPRP”) was filed with the Office of the Chief Clerk on April 22, 2008.

The EDPRP was mailed to Xklen at its last known address on April 22, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Xklen received notice of the EDPRP on April 24, 2008, as evidenced by the signature on the card.

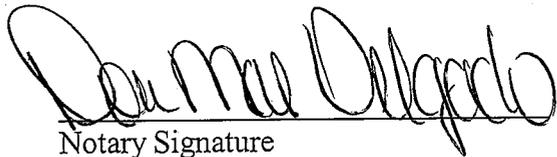
More than 20 days have elapsed since Xklen received notice of the EDPRP. Xklen failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Lena Roberts, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Lena Roberts, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 9<sup>th</sup> day of May, A.D., 2008.



Notary Signature

