EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1014-MWD-E **TCEQ ID:** RN101241164 **CASE NO.:** 36102

RESPONDENT NAME: City of Keene

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: City of Keene Wastewater Treatment Facility, located approximately 0.6 mile south of U.S. Highway 67 on the east side of County Road 318 at its intersection with State Highway 3136, Johnson County

TYPE OF OPERATION: Wastewater treatment system

SMALL BUSINESS: ___ Yes __X__ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on November 17, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Mark Oliver, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-3308; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. James Minor, City Administrator, City of Keene, 100 North Mockingbird Lane, Keene, Texas 76059
Mr. Michael Baze, Director of Public Works, City of Keene, 100 North Mockingbird Lane, Keene, Texas 76059
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up X Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** May 5, 2008 **Date of NOV/NOE Relating to this Case:** June 6, 2008 (NOE) **Background Facts:** This was a record review. **WATER** Failure to comply with the permitted effluent limitations for ammonia nitrogen [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010611002, Effluent Limitations and Monitoring Requirements No. 1].	**Total Assessed:** $5,280 **Total Deferred:** $1,056 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $4,224 **Site Compliance History Classification** __ **High** X **Average** __ **Poor** **Person Compliance History Classification** __ **High** X **Average** __ **Poor** **Major Source:** __ Yes X No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility: a. By January 31, 2008, installed a sludge box to replace inefficient drying beds; and b. By June 24, 2008, repaired a broken aerator main shaft to return an oxidation ditch to service. **Ordering Provisions:** The Order will require the Respondent to, within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010611002, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision June 12, 2008*

TCEQ

DATES					
Assigned	16-Jun-2008				
PCW	23-Jun-2008	Screening	23-Jun-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	City of Keene		
Reg. Ent. Ref. No.	RN101241164		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36102	No. of Violations	1
Docket No.	2008-1014-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Mark Oliver
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 37.0% Enhancement *Subtotals 2, 3, & 7* $1,480

Notes: The penalty is enhanced due to one NOV with violations same or similar to those cited in this action, six self-reported monthly effluent violations, and one NOV with unrelated violations.

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* $0

Economic Benefit 0.0% Enhancement* *Subtotal 6* $0

Total EB Amounts $7,586
Approx. Cost of Compliance $61,906
*Capped at the Total EB $ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal* $5,480

OTHER FACTORS AS JUSTICE MAY REQUIRE -3.6% *Adjustment* -$200

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended reduction in the penalty so that monthly self-reported effluent violations do not overly impact the penalty amount

Final Penalty Amount $5,280

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $5,280

DEFERRAL 20.0% Reduction *Adjustment* -$1,056

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $4,224

Screening Date 23-Jun-2008 **Docket No.** 2008-1014-MWD-E **PCW**

Respondent City of Keene *Policy Revision 2 (September 2002)*

Case ID No. 36102 *PCW Revision June 12, 2008*

Reg. Ent. Reference No. RN101241164

Media [Statute] Water Quality

Enf. Coordinator Mark Oliver

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*)	7	35%
	Other written NOVs	1	2%
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) 37%

>> **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

The penalty is enhanced due to one NOV with violations same or similar to those cited in this action, six self-reported monthly effluent violations, and one NOV with unrelated violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 37%

Screening Date 23-Jun-2008 **Docket No.** 2008-1014-MWD-E **PCW**

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

Respondent City of Keene

Case ID No. 36102

Reg. Ent. Reference No. RN101241164

Media [Statute] Water Quality

Enf. Coordinator Mark Oliver

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010611002, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with the permitted effluent limitations, as documented during a record review conducted on May 5, 2008 and shown in the attached table.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: A simplified model was used to evaluate total ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels protective of human health or environmental receptors.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 4 | 182 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $4,000

Four quarterly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction $0

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

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

Violation Subtotal $4,000

Economic Benefit (EB) for this violation

Estimated EB Amount $7,586

Statutory Limit Test

Violation Final Penalty Total $5,280

This violation Final Assessed Penalty (adjusted for limits) $5,280

Economic Benefit Worksheet

Respondent City of Keene
Case ID No. 36102
Reg. Ent. Reference No. RN101241164
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$61,206	31-May-2007	28-Feb-2009	1.75	$357	$7,143	$7,501
Buildings				0.00	$0	$0	$0
Other (as needed)	$700	31-May-2007	28-Feb-2009	1.75	$4	$82	$86
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: Equipment costs to purchase a sludge box. Other costs to repair a broken aerator main shaft. The date required is the first month of noncompliance. The final date is the expected 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: $61,906

TOTAL: $7,586

EFFLUENT VIOLATION TABLE City of Keene TPDES Permit No. WQ0010611002 2008-1014-MWD-E		
Months	NH3-N daily avg. loading Limit = 21 lbs/day	NH3-N daily avg. conc. Limit = 3 mg/L
5/31/2007	c	3.11
9/30/2007	c	4.46
11/30/2007	c	3.30
12/31/2007	c	5.71
1/31/2008	c	6.04
2/29/2008	22.6927	6.72

avg. = average
c = compliant
conc. = concentration
lbs/day = pounds per day
mg/L = milligrams per liter
NH3-N = ammonia nitrogen

Compliance History

Customer/Respondent/Owner-Operator:	CN600678460	City of Keene	Classification: AVERAGE	Rating: 2.86
Regulated Entity:	RN101241164	CITY OF KEENE	Classification: AVERAGE	Site Rating: 0.31

ID Number(s):	WASTEWATER	PERMIT	WQ0010611002
	WASTEWATER	PERMIT	TPDES0106291
	WASTEWATER	PERMIT	TX0106291
	WASTEWATER LICENSING	LICENSE	WQ0010611002

Location: located appx. 0.6 miles south of US Hwy 67 on the east side of CR 318 at its intx. with SH 3136 in Johnson County, TX

Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: June 24, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 18, 2003 to June 18, 2008

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

Name: Mark Oliver Phone: 512-239-3308

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership 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	07/14/2003	(323315)
2	08/20/2003	(323316)
3	09/17/2003	(323317)
4	10/10/2003	(323318)
5	11/14/2003	(323319)
6	12/05/2003	(323320)
7	01/12/2004	(323321)
8	02/05/2004	(323310)
9	03/05/2004	(323311)
10	04/22/2004	(323312)
11	05/07/2004	(364581)
12	06/07/2004	(364582)
13	07/14/2004	(364583)
14	08/06/2004	(364584)
15	09/17/2004	(364585)
16	10/11/2004	(364586)
17	12/20/2004	(388838)
18	02/09/2005	(426439)
19	04/13/2005	(426440)

20	05/16/2005	(426441)
21	07/11/2005	(446729)
22	08/15/2005	(446730)
23	09/01/2005	(418360)
24	09/15/2005	(446731)
25	10/10/2005	(479634)
26	11/10/2005	(479632)
27	12/14/2005	(479635)
28	01/17/2006	(479636)
29	02/17/2006	(479631)
30	03/13/2006	(479633)
31	04/12/2006	(505303)
32	05/05/2006	(505304)
33	06/14/2006	(505305)
34	07/13/2006	(527579)
35	07/25/2006	(482568)
36	08/08/2006	(527580)
37	09/07/2006	(510758)
38	09/12/2006	(527581)
39	10/09/2006	(551281)
40	11/13/2006	(551282)
41	12/08/2006	(551283)
42	01/10/2007	(587974)
43	02/12/2007	(587969)
44	03/14/2007	(587970)
45	04/12/2007	(587971)
46	05/18/2007	(587972)
47	06/14/2007	(587973)
48	07/18/2007	(605281)
49	08/08/2007	(605282)
50	09/12/2007	(605283)
51	10/11/2007	(628986)
52	11/16/2007	(628987)
53	12/10/2007	(628988)
54	01/18/2008	(676578)
55	02/11/2008	(676577)
56	02/27/2008	(617419)
57	05/05/2008	(653726)
58	06/09/2008	(657002)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date 07/26/2006 (482568)

Self Report? NO Classificati Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)
30 TAC Chapter 305, SubChapter F 305.125(5)
TWC Chapter 26 26.121
TWC Chapter 26 26.121(a)
TWC Chapter 26 26.121(a)(1)
TWC Chapter 26 26.121(a)(2)
TWC Chapter 26 26.121(a)(3)
TWC Chapter 26 26.121(b)
TWC Chapter 26 26.121(c)
TWC Chapter 26 26.121(d)
TWC Chapter 26 26.121(e)

Description: Failure to prevent the unauthorized discharge of wastewater from the collection system.

Self Report? NO Classificati Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to maintain compliance with permitted effluent limits.

Self Report? NO Classificati Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to measure flow according to permit requirements.

Self Report? NO Classificati Moderate
Citation: 30 TAC Chapter 317 317.4(a)(8)
Description: Failure to provide an adequate backflow prevention assembly device at the plant's main potable water service line.
Self Report? NO Classificati Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)
30 TAC Chapter 305, SubChapter F 305.125(11)(C)
Description: Failure to submit annual sludge report.
Self Report? NO Classificati Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.4(d)
Description: Failure to maintain the treatment systems.
Self Report? NO Classificati Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.5(b)
Description: Failure to collect effluent samples at the frequency specified in the permit.
Date 05/31/2007 (587973)
Self Report? YES Classificati Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date 09/30/2007 (628986)
Self Report? YES Classificati Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date 11/30/2007 (628988)
Self Report? YES Classificati Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date 12/31/2007 (676578)
Self Report? YES Classificati Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date 01/31/2008 (676577)
Self Report? YES Classificati Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date 02/29/2008
Self Report? YES Classificati Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date 02/29/2008 (617419)
Self Report? NO Classificati Moderate
Citation: 30 TAC Chapter 317 317.4(a)(8)
Description: Failure to have the RPZ backflow prevention device tested annually.
Self Report? NO Classificati Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: PERMIT Effluent Limitations and Monitoring Req.
Description: Failure to measure flow according to permit requirements.
Self Report? NO Classificati Moderate
Citation: 30 TAC Chapter 317 317.6(a)
30 TAC Chapter 317 317.6(b)(1)(C)
Description: Failure to provide a functioning scale to determine the amount of chlorine used daily and the amount of chlorine remaining in the cylinder.

Self Report?	NO	Classificati	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)		
Description:	Failure to maintain the treatment systems.		

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
CITY OF KEENE	§	
RN101241164	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-1014-MWD-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 the City of Keene ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment system located approximately 0.6 mile south of U.S. Highway 67 on the east side of County Road 318 at its intersection with State Highway 3136 in Johnson County, Texas (the "Facility").

2. The City has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.

3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.

4. The City received notice of the violations alleged in Section II ("Allegations") on or about June 11, 2008.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Thousand Two Hundred Eighty Dollars ($5,280) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The City has paid Four Thousand Two Hundred Twenty-Four Dollars ($4,224) of the administrative penalty and One Thousand Fifty-Six Dollars ($1,056) is deferred contingent upon the City'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 City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City 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 City 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 City has implemented the following corrective measures at the Facility:

   a. By January 31, 2008, installed a sludge box to replace inefficient drying beds; and

   b. By June 24, 2008, repaired a broken aerator main shaft to return an oxidation ditch to service.

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 City 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 Facility, the City is alleged to have failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010611002, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on May 5, 2008, and shown in the following table.

EFFLUENT VIOLATION TABLE		
Months	NH3-N daily avg. loading Limit = 21 lbs/day	NH3-N daily avg. conc. Limit = 3 mg/L
5/31/2007	c	3.11
9/30/2007	c	4.46
11/30/2007	c	3.30
12/31/2007	c	5.71
1/31/2008	c	6.04
2/29/2008	22.6927	6.72

avg. = average
c = compliant
conc. = concentration
lbs/day = pounds per day
mg/L = milligrams per liter
NH3-N = ammonia nitrogen

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City'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: City of Keene, Docket No. 2008-1014-MWD-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. It is further ordered that the City shall, within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010611002, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and 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 certification shall be submitted to:

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

with a copy to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, 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

_____ 10/10/2008
For the Executive Director 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.

_____ 8-28-08
Signature Date

MICHAEL BAZE Director of Public Works
Name (Printed or typed) Title
Authorized Representative of
City of Keene

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.