

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1680-PWS-E **TCEQ ID:** RN102925633 and RN101454270 **CASE NO.:** 34794
RESPONDENT NAME: Kent Distributors, Incorporated

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input 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	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" 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>SITE WHERE VIOLATION(S) OCCURRED: Kent Kwik Convenience Store 315 (Facility 2), 11400 West State Highway 158, Midland, Midland County; Kent Kwik Convenience Store 312 (Facility 1), 2315 East Front Street, Midland, Midland County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding these facility locations.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 31, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Christopher Keffer, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-5610; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Bobby Barrett, Director of Facilities, Kent Distributors, Incorporated, P.O. Box 908001, Midland, Texas 79708 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Record Reviews Relating to this Case: May 1, 2007 and June 1, 2007</p> <p>Date of NOE Relating to this Case: July 14, 2007 (NOE)</p> <p>Background Facts: These were routine record reviews.</p> <p>WATER</p> <p>Failure to collect monthly water samples for bacteriological analysis of the public drinking water supply and failed to provide public notification of the failure to conduct monthly bacteriological sampling [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d)].</p>	<p>Total Assessed: \$6,440</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$6,440</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: This is a Findings Order because the Respondent had more than 3 repeated enforcement actions over the prior five-year period for the same violation.</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Within 10 days after the effective date of this Agreed Order:</p> <p>i. Provide public notification to customers for Facility No. 1 and Facility No. 2. The notice may be posted in a conspicuous place within the service area and must continue as long as the violations exist; and</p> <p>ii. Begin collecting monthly water samples for bacteriological analysis utilizing samples which are representative of the water system for Facility No. 1 and Facility No. 2.</p> <p>b) Within 25 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other record to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): PWS Nos. 1650086 and 1650096



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

DATES	Assigned	24-Sep-2007	Screening	10-Oct-2007	EPA Due	1-Sep-2007
	PCW	16-Oct-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Kent Distributors, Incorporated		
Reg. Ent. Ref. No.	RN101454270		
Facility/Site Region	7-Midland	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	34794	No. of Violations	1
Docket No.	2007-1680-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Enf. Coordinator	Christopher Keffer
Multi-Media		EC's Team	EnforcementTeam 2
Admin. Penalty \$	Limit Minimum	\$50	Maximum
			\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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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	42% Enhancement	Subtotals 2, 3, & 7	\$840
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Notes: The penalty is enhanced due to eight NOV's with violations same or similar to those cited in this action and one unrelated NOV.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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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.

	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$385	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$400	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,840
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OTHER FACTORS AS JUSTICE MAY REQUIRE	14%	Adjustment	\$400
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes: Enhancement recommended for the recovery of avoided costs of compliance.

Final Penalty Amount	\$3,240
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,240
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DEFERRAL	0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$3,240
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Screening Date 10-Oct-2007

Docket No. 2007-1680-PWS-E

PCW

Respondent Kent Distributors, Incorporated

Policy Revision 2 (September 2002)

Case ID No. 34794

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101454270

Media [Statute] Public Water Supply

Enf. Coordinator Christopher Keffer

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)	8	40%
	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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 42%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty is enhanced due to eight NOVs with violations same or similar to those cited in this action and one unrelated NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 42%

Screening Date 10-Oct-2007	Docket No. 2007-1680-PWS-E	PCW
Respondent Kent Distributors, Incorporated	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 34794	<small>PCW Revision June 26, 2007</small>	
Reg. Ent. Reference No. RN101454270		
Media [Statute] Public Water Supply		
Enf. Coordinator Christopher Keffer		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)	
Violation Description	Failed to collect water samples for monthly bacteriological analysis of the public drinking water supply and failed to provide public notification of the failure to conduct monthly bacteriological sampling during the months of July, August, October, and November, 2006 and January, February, April, and May, 2007.	
Base Penalty		<input type="text" value="\$1,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
Potential	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
					Percent <input type="text" value="0%"/>
Matrix Notes	Failure to perform routine bacteriological sampling of the public water supply could result in the public being exposed to significant amounts of bacteriological contamination in the drinking water which could exceed levels that are protective of human health.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Eight monthly events are recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$385"/>	Violation Final Penalty Total <input type="text" value="\$3,240"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,240"/>	

Economic Benefit Worksheet

Respondent: Kent Distributors, Incorporated
Case ID No.: 34794
Reg. Ent. Reference No.: RN101454270
Media: Public Water Supply
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	\$400	1-Jul-2006	1-Jun-2007	0.9	\$18	\$367	\$385
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

The avoided costs include the amount to conduct monthly bacteriological sampling and/or provide public notification, calculated for the months in which no monitoring and notice was performed to the month in which the Respondent achieved compliance.

Approx. Cost of Compliance \$400

TOTAL \$385

Compliance History

Customer/Respondent/Owner-Operator:	CN602525966 Kent Distributors, Incorporated	Classification:	Rating:
Regulated Entity:	RN101454270 KENT KWIK CONVENIENCE STORE 315	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1650096
Location:	11400 W STATE HIGHWAY 158, MIDLAND, TX		
TCEQ Region:	REGION 07 - MIDLAND		
Date Compliance History Prepared:	October 10, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 10, 2002 to October 10, 2007		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Christopher Keffer	Phone:	(512) 239-5610

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. (CEEDS Inv. Track. No.)

- | | | |
|----|------------|----------|
| 1 | 07/09/2003 | (128829) |
| 2 | 07/03/2006 | (466030) |
| 3 | 08/25/2006 | (569889) |
| 4 | 09/25/2006 | (569922) |
| 5 | 09/26/2006 | (512980) |
| 6 | 11/21/2006 | (569927) |
| 7 | 12/21/2006 | (569950) |
| 8 | 02/21/2007 | (569951) |
| 9 | 03/29/2007 | (569954) |
| 10 | 05/25/2007 | (569956) |
| 11 | 06/25/2007 | (569959) |
| 12 | 09/20/2007 | (571188) |

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

Date:	07/03/2006 (466030)	Classification:	Moderate
Self Report?	NO		
Citation:	30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)		
Description:	Failure to continuously maintain a free chlorine disinfectant residual concentration of at least 0.2 milligrams per liter (mg/L) in the distribution system.		
Date:	08/25/2006 (569889)	Classification:	Moderate
Self Report?	NO		
Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)		
Description:	07/2006 - Failure to collect any routine monitoring sample(s) for 07/2006.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)		
Description:	07/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in		

07/2006.
Date: 09/25/2006 (569922)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: 08/2006 - Failure to collect any routine monitoring sample(s) for 08/2006.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: 08/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 08/2006.

Date: 11/21/2006 (569927)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: 10/2006 - Failure to collect any routine monitoring sample(s) for 10/2006.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: 10/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 10/2006.

Date: 12/21/2006 (569950)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: 11/2006 - Failure to collect any routine monitoring sample(s) for 11/2006.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: 11/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 11/2006.

Date: 02/21/2007 (569951)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: 01/2007 - Failure to collect any routine monitoring sample(s) for 01/2007.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: 01/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 01/2007.

Date: 03/29/2007 (569954)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: 02/2007 - Failure to collect any routine monitoring sample(s) for 02/2007.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: 02/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 02/2007.

Date: 05/25/2007 (569956)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: 04/2007 - Failure to collect any routine monitoring sample(s) for 04/2007.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: 04/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 04/2007.

Date: 06/25/2007 (569959)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: 05/2007 - Failure to collect any routine monitoring sample(s) for 05/2007.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: 05/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 05/2007.

- 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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	24-Sep-2007	Screening	10-Oct-2007	EPA Due	1-Sep-2007
	PCW	16-Oct-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Kent Distributors, Incorporated
Reg. Ent. Ref. No.	RN102925633
Facility/Site Region	7-Midland
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	34794	No. of Violations	1	
Docket No.	2007-1680-PWS-E	Order Type	Findings	
Media Program(s)	Public Water Supply	Enf. Coordinator	Christopher Keffer	
Multi-Media		EC's Team	Enforcement Team 2	
Admin. Penalty \$	Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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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	40% Enhancement	Subtotals 2, 3, & 7	\$800
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Notes The penalty is enhanced due to eight NOV's with violations same or similar to those cited in this action.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Subtotal 6	\$0
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Total EB Amounts	\$420	0% Enhancement*
Approx. Cost of Compliance	\$400	*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,800
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OTHER FACTORS AS JUSTICE MAY REQUIRE	14%	Adjustment	\$400
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes Enhancement recommended for the recovery of avoided costs of compliance.

Final Penalty Amount	\$3,200
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,200
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$3,200
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Screening Date 10-Oct-2007 Docket No. 2007-1680-PWS-E

PCW

Respondent Kent Distributors, Incorporated

Policy Revision 2 (September 2002)

Case ID No. 34794

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102925633

Media [Statute] Public Water Supply

Enf. Coordinator Christopher Keffer

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	8	40%
	Other written NOV's	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) 40%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty is enhanced due to eight NOV's with violations same or similar to those cited in this action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 40%

Screening Date	10-Oct-2007	Docket No.	2007-1680-PWS-E	PCW
Respondent	Kent Distributors, Incorporated		Policy Revision 2 (September 2002)	
Case ID No.	34794	PCW Revision June 26, 2007		
Reg. Ent. Reference No.	RN102925633			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Christopher Keffer			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)			
Violation Description	Failed to collect water samples for monthly bacteriological analysis of the public drinking water supply and failed to provide public notification of the failure to conduct monthly bacteriological sampling during the months of May, July, August, October, and November, 2006 and January, February, and April, 2007.			
Base Penalty	\$1,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
Potential	x			25%	

>> Programmatic Matrix

Matrix Notes	Falsification			Percent
	Major	Moderate	Minor	
				0%
Failure to perform routine bacteriological sampling of the public water supply could result in the public being exposed to significant amounts of bacteriological contamination in the drinking water which could exceed levels that are protective of human health.				

Adjustment \$750

\$250

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty \$2,000

Eight monthly events are recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$420"/>	Violation Final Penalty Total <input type="text" value="\$3,200"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,200"/>	

Economic Benefit Worksheet

Respondent Kent Distributors, Incorporated
Case ID No. 34794
Reg. Ent. Reference No. RN102925633
Media Public Water Supply
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	\$400	1-May-2006	1-May-2007	1.0	\$20	\$400	\$420
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

The avoided costs include the amount to conduct monthly bacteriological sampling and/or provide public notification, calculated for the months in which no monitoring and notice was performed to the month in which the Respondent achieved compliance.

Approx. Cost of Compliance

\$400

TOTAL

\$420

Compliance History

Customer/Respondent/Owner-Operator:	CN602525966 Kent Distributors, Incorporated	Classification:	Rating:
Regulated Entity:	RN102925633 KENT KWIK CONVENIENCE STORE 312	Classification:	Site Rating:
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		38143
	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION		1650086
	AIR NEW SOURCE PERMITS REGISTRATION		70844
Location:	2315 E FRONT ST, MIDLAND, TX	Rating Date: 9/1/2007 Repeat Violator: NO	
TCEQ Region:	REGION 07 - MIDLAND		
Date Compliance History Prepared:	October 10, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 10, 2002 to October 10, 2007		

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

Name: Christopher Keffer Phone: (512) 239-5610

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 | 12/18/2002 | (15686) |
| 2 | 04/16/2004 | (264492) |
| 3 | 04/06/2005 | (373106) |
| 4 | 06/27/2006 | (569981) |
| 5 | 08/25/2006 | (569988) |
| 6 | 09/25/2006 | (569992) |
| 7 | 11/21/2006 | (570007) |
| 8 | 12/21/2006 | (570012) |
| 9 | 02/21/2007 | (570021) |
| 10 | 03/29/2007 | (570026) |
| 11 | 05/25/2007 | (570027) |
| 12 | 09/21/2007 | (570372) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | |
|--------------|--|--------------------------|
| Date: | 06/27/2006 (569981) | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | |
| Description: | 05/2006 - Failure to collect any routine monitoring sample(s) for 05/2006. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B) | |
| Description: | 05/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 05/2006. | |
| Date: | 08/25/2006 (569988) | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) | |

Description: 07/2006 - Failure to collect any routine monitoring sample(s) for 07/2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: 07/2006 - Failure to post PN for not collecting any routine monitoring sample(s) for 07/2006.
 Date: 09/25/2006 (569992)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: 08/2006 - Failure to collect any routine monitoring sample(s) for 08/2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: 08/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 08/2006.
 Date: 12/21/2006 (570007)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: 10/2006 - Failure to collect any routine monitoring sample(s) for 10/2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: 10/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 10/2006.
 Date: 12/21/2006 (570012)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: 11/2006 - Failure to collect any routine monitoring sample(s) for 11/2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: 11/2006 - Failure to post PN for not collecting any routine monitoring sample(s) in 11/2006.
 Date: 02/21/2007 (570021)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: 01/2007 - Failure to collect any routine monitoring sample(s) for 01/2007.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: 01/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 01/2007.
 Date: 03/29/2007 (570026)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: 02/2007 - Failure to collect any routine monitoring sample(s) for 02/2007.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: 02/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 02/2007.
 Date: 05/25/2007 (570027)
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: 04/2007 - Failure to collect any routine monitoring sample(s) for 04/2007.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: 04/2007 - Failure to post PN for not collecting any routine monitoring sample(s) in 04/2007.

- 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
KENT DISTRIBUTORS,
INCORPORATED
RN102925633 AND RN101454270

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-1680-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kent Distributors, Incorporated ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a convenience store with a public water supply located at 2315 East Front Street in Midland, Midland County, Texas ("Facility No. 1") and 11400 West State Highway 158 in Midland, Midland County, Texas ("Facility No. 2") and each facility has one service connection and serves 25 people per day for at least 60 days per year.
2. During a record review on May 1, 2007, TCEQ staff documented that the Respondent did not collect monthly water samples for bacteriological analysis at Facility No. 1 and did not provide public notification of the failure to conduct monthly bacteriological sampling during the months of May, July, August, October, and November, 2006 and January, February, and April, 2007.
3. During a record review on June 1, 2007, TCEQ staff documented that the Respondent did not collect monthly water samples for bacteriological analysis at Facility No. 2 and did not provide public notification of the failure to conduct monthly bacteriological sampling during the months of July, August, October, and November, 2006 and January, February, April, and May, 2007.
4. The Respondent received notices of the violations for Facility No. 1 and Facility No. 2 on July 19, 2007.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact Nos. 2 and 3, the Respondent failed to collect monthly water samples for bacteriological analysis of the public drinking water supply and failed to provide public notification of the failure to conduct monthly bacteriological sampling, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Six Thousand Four Hundred Forty Dollars (\$6,440) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid the Six Thousand Four Hundred Forty Dollar (\$6,440) administrative penalty.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Six Thousand Four Hundred Forty Dollars (\$6,440) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kent Distributors, Incorporated, Docket No. 2007-1680-PWS-E" to:

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

2. The Respondent shall undertake the following technical requirements at the Facilities:
 - a. Within 10 days after the effective date of this Agreed Order:
 - i. Provide public notification to customers for Facility No. 1 and Facility No. 2, in accordance with 30 TEX. ADMIN CODE § 290.122. The notice may be posted in a conspicuous place within the service area and must continue as long as the violations exist; and
 - ii. Begin collecting monthly water samples for bacteriological analysis utilizing samples which are representative of the water system for Facility No. 1 and Facility No. 2, in accordance with 30 TEX. ADMIN CODE § 290.109.
 - b. Within 25 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.a. 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:

Public Water Supply Section, Manager
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street, Building 4, Suite 107
Midland, Texas 79705-5404

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facilities operations referenced in this Agreed Order.
4. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. 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.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. 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.

9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Smith
For the Executive Director

3/7/2008
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Kent Distributors, Incorporated. I am authorized to agree to the attached Agreed Order on behalf of Kent Distributors, Incorporated, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Kent Distributors, Incorporated waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

Bobby Barrett
Signature

12-21-07
Date

Bobby Barrett
Name (Printed or typed)
Authorized Representative of
Kent Distributors, Incorporated

~~12-21-07~~ DIRECTOR OF FACILITIES
Title

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.

10/10/2020

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