

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0935-AIR-E **TCEQ ID:** RN100683291 **CASE NO.:** 37806

RESPONDENT NAME: Kaneka Texas Corporation

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input 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 checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input 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>SITE WHERE VIOLATION(S) OCCURRED: Kaneka High Tech Materials, 6161 Underwood Road, Pasadena, Harris County</p> <p>TYPE OF OPERATION: Plastic materials and resin manufacturing plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</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 November 30, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Martina Kusniadi, Enforcement Division, Enforcement Team 4, MC R-12, 713-767-3682; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Steven Poling, Senior Environmental Associate, Kaneka Texas Corporation, 6161 Underwood Road, Pasadena, Texas 77507 Mr. J. C. Skarke, Senior Vice President, Kaneka Texas Corporation, 6161 Underwood Road, Pasadena, Texas 77507 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 Investigation Relating to this Case: April 23 to May 14, 2009</p> <p>Date of NOV/NOE Relating to this Case: June 4, 2009 (NOE)</p> <p>Background Facts: This was a record review investigation.</p> <p>AIR</p> <p>Failure to submit an Emissions Inventory Questionnaire ("EIQ") for the year 2008. Specifically, the EIQ for the 2008 calendar year emissions data was due by March 31, 2009, but the Respondent failed to submit that EIQ [30 TEX. ADMIN. CODE § 101.10(e) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$1,950</p> <p>Total Deferred: \$390 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,560</p> <p>Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that, by May 15, 2009, the Respondent has submitted the required EIQ.</p>

Additional ID No(s): HG3299J



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	8-Jun-2009			
	PCW	15-Jun-2009	Screening	15-Jun-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Kaneka Texas Corporation				
Reg. Ent. Ref. No.	RN100683291				
Facility/Site Region	12-Houston	Major/Minor Source	Major		

CASE INFORMATION					
Enf./Case ID No.	37806	No. of Violations	1		
Docket No.	2009-0935-AIR-E	Order Type	1660		
Media Program(s)	Air	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Martina Kusniadi		
		EC's Team	Enforcement Team 4		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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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	3.0% Enhancement	Subtotals 2, 3, & 7	\$75
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Notes: The penalty was enhanced by one similar NOV, and reduced by two NOAs.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$625
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$6
 Approx. Cost of Compliance: \$1,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,950
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$1,950
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,950
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DEFERRAL	20.0% Reduction	Adjustment	-\$390
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$1,560
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Screening Date 15-Jun-2009

Docket No. 2009-0935-AIR-E

PCW

Respondent Kaneka Texas Corporation

Policy Revision 2 (September 2002)

Case ID No. 37806

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100683291

Media [Statute] Air

Enf. Coordinator Martina Kusniadi

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)	1	5%
	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 judgments 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)	2	-2%
	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) 3%

>> 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 was enhanced by one similar NOV, and reduced by two NOAs.

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

Screening Date 15-Jun-2009	Docket No. 2009-0935-AIR-E	PCW		
Respondent Kaneka Texas Corporation		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 37806		<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN100683291				
Media [Statute] Air				
Enf. Coordinator Martina Kusniadi				
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code § 101.10(e) and Tex. Health & Safety Code § 382.085(b)			
Violation Description	Failed to submit an Emissions Inventory Questionnaire ("EIQ") for the year 2008. Specifically, the EIQ for the 2008 calendar year emissions data was due by March 31, 2009, but the Respondent failed to submit that EIQ, as documented during the record review conducted April 23, 2009 to May 14, 2009.			
	Base Penalty	\$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	0%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
		Percent	25%	
Matrix Notes	The Respondent failed to comply with 100% of the rule.			
	Adjustment	\$7,500		
				\$2,500
Violation Events				
	Number of Violation Events	1	45	Number of violation days
<small>mark only one with an x</small>		daily	<input type="text"/>	
		weekly	<input type="text"/>	
		monthly	<input type="text"/>	
		quarterly	<input type="text"/>	
		semiannual	<input type="text"/>	
		annual	<input type="text"/>	
		single event	x	
				Violation Base Penalty
				\$2,600
	One single event is recommended based on the one report.			
Good Faith Efforts to Comply		25.0% Reduction		\$625
		Before NOV	NOV to EDRP/Settlement Offer	
	Extraordinary	<input type="text"/>	<input type="text"/>	
	Ordinary	x	<input type="text"/>	
	N/A	<input type="text"/>	(mark with x)	
Notes	The Respondent achieved compliance on May 15, 2009.			
			Violation Subtotal	\$1,875
Economic Benefit (EB) for this violation		Statutory Limit Test		
	Estimated EB Amount	\$8	Violation Final Penalty Total	\$1,950
			This violation Final Assessed Penalty (adjusted for limits)	\$1,950

Economic Benefit Worksheet

Respondent Kaneka Texas Corporation
Case ID No. 37806
Reg. Ent. Reference No. RN100683291
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$1,000	31-Mar-2009	15-May-2009	0.12	\$6	n/a	\$6
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated costs to prepare and submit an EIQ. The Date Required is the date the report was due, and the Final Date is the date the EIQ was submitted.

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 TOTAL

\$1,000		TOTAL	\$6
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Compliance History Report

Customer/Respondent/Owner-Operator:	CN600129928 Kaneka Texas Corporation	Classification: AVERAGE	Rating: 2.11
Regulated Entity:	RN100683291 KANEKA HIGH TECH MATERIALS	Classification: HIGH	Site Rating: 0.00
ID Number(s):	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HG3299J
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD987991684
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	39484
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG3299J
	AIR NEW SOURCE PERMITS	PERMIT	39471
	AIR NEW SOURCE PERMITS	PERMIT	40193
	AIR NEW SOURCE PERMITS	PERMIT	44587
	AIR NEW SOURCE PERMITS	AFS NUM	4820101370
	AIR NEW SOURCE PERMITS	REGISTRATION	73778
	STORMWATER	PERMIT	TXR05U162
	AIR OPERATING PERMITS	PERMIT	2800
	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG3299J
Location:	6161 UNDERWOOD RD, PASADENA, TX, 77507		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	June 09, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 08, 2004 to June 08, 2009		

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

Name: Martina L. Kusnladi Phone: 713-767-3682

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

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	12/09/2004	(339570)
2	07/31/2008	(686060)
3	06/03/2009	(746711)

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

Date:	07/31/2008	(686060)	
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 101, SubChapter A 101.10(e) 5C THSC Chapter 382.382.085(b)		
Description:	Failure to submit a 2007 Emissions Inventory; category B19(g)(3).		

F. Environmental audits.

Notice of Intent Date: 06/22/2006 (484943)
No DOV Associated

Notice of Intent Date: 07/19/2007 (570682)
No DOV Associated

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
KANEKA TEXAS CORPORATION
RN100683291

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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0935-AIR-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 Kaneka Texas Corporation ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a plastic materials and resin manufacturing plant at 6161 Underwood Road in Pasadena, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 9, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of One Thousand Nine Hundred Fifty Dollars (\$1,950) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Five Hundred Sixty Dollars (\$1,560) of the administrative penalty and Three Hundred Ninety Dollars (\$390) is deferred contingent upon the

Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that, by May 15, 2009, the Respondent has submitted the required Emissions Inventory Questionnaire ("EIQ").
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have failed to submit an EIQ for the year 2008, in violation of 30 TEX. ADMIN. CODE § 101.10(e) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during the record review conducted April 23, 2009 to May 14, 2009. Specifically, the EIQ for the 2008 calendar year emissions data was due by March 31, 2009, but the Respondent failed to submit that EIQ.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Kaneka Texas Corporation, Docket No. 2009-0935-AIR-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date 10/23/2009

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.



Signature

Date 09.14.09

J.C. Skarke

Name (Printed or typed)
Authorized Representative of
Kaneka Texas Corporation



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.