

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1710-MWD-E **TCEQ ID:** RN102078169 **CASE NO.:** 36736

RESPONDENT NAME: City of Kennard

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 type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" 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: City of Kennard Wastewater Treatment Plant, located on the southeast side of Kennard on a 27-acre tract, on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357, Houston County</p> <p>TYPE OF OPERATION: Wastewater treatment 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 March 30, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable Bill Thomas, Mayor, City of Kennard, P.O. Box 115, Kennard, Texas 75847 Mr. Mike Deckard, City Administrator, City of Kennard, P.O. Box 115, Kennard, Texas 75847 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 25, 2008</p> <p>Date of NOV/NOE Relating to this Case: August 20, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to maintain compliance with the permit effluent limits of 30 milligrams per liter ("mg/L") daily average concentration for 5-day biochemical oxygen demand ("BOD5"). Specifically, the Respondent reported 40.7 mg/L BOD5 during April 2008 and 34.7 mg/L BOD5 during May 2008 [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011474001, Effluent Limitations and Monitoring Requirements No. 1].</p> <p>2) Failure to submit noncompliance notification reports for effluent violations that deviated from the permitted effluent limits by more than 40%. Specifically, BOD5 values for the month of April 2006 exceeded the permitted limits by more than 40% and were not reported to TCEQ [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0011474001, Monitoring and Reporting Requirements No. 7.c].</p> <p>3) Failure to maintain records of monitoring activities, which includes the identity of the individual who made the measurement. Specifically, personnel were not recording the identity of the person calibrating the dissolved oxygen meter [30 TEX. ADMIN. CODE § 319.7(a) and TPDES Permit No. WQ0011474001, Monitoring</p>	<p>Total Assessed: \$8,745</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: \$8,745</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" 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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that by July 1, 2008, the Respondent implemented the following corrective measures at the Facility:</p> <p>a. Started properly maintaining records of monitoring activities by recording the identity of the person calibrating the dissolved oxygen meter; and</p> <p>b. Updated operational guidance and conducted employee training to ensure that proper notification is submitted to TCEQ when the effluent deviates from the permitted limits by more than 40%, and to ensure that records of monitoring activities are properly documented.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order, remove and properly dispose of the sludge from the stream, evaluate the causes of the unauthorized discharge of sludge from the outfall, and identify the necessary corrective actions to prevent recurrence;</p> <p>b. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a; and</p> <p>c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0011474001, 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.</p>

<p>and Reporting Requirements No. 3(c)(ii)].</p> <p>4) Failure to prevent an unauthorized discharge of sludge into or adjacent to water in the state. Specifically, a light gray scum layer was observed on the stream bottom immediately downstream of the outfall and extending approximately 30 feet downstream. The sample results indicated that the upstream sample contained 0.50 mg/L Ammonia as Nitrogen ("NH3N") in Leachate and 1.56 mg/L of Total Kjeldahl Nitrogen ("TKN") in Leachate. The downstream sample contained 5.26 mg/L of NH3N in Leachate and 6.72 mg/L TKN in Leachate [30 TEX. ADMIN. CODE § 305.125(5), TEX. WATER CODE § 26.121(a), and TPDES Permit No. WQ0011474001, Permit Conditions No. 2.d].</p>		
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Additional ID No(s): WQ0011474001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	25-Aug-2008	Screening	27-Oct-2008	EPA Due	
	PCW	6-Jan-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Kennard
Reg. Ent. Ref. No.	RN102078169
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36736	No. of Violations	4
Docket No.	2008-1710-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Heather Brister
		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	\$4,100
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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	120.0% Enhancement	Subtotals 2, 3, & 7	\$4,920
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Notes: The Respondent reported 15 months of self-reported effluent violations, was issued one Notice of Violation for violations that are considered same or similar violations, and was issued two Agreed Orders containing a denial of liability.

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	\$275
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$855
 Approx. Cost of Compliance: \$11,350
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,745
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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	\$8,745
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,745
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DEFERRAL	0.0% 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	\$8,745
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Screening Date 27-Oct-2008

Docket No. 2008-1710-MWD-E

PCW

Respondent City of Kennard

Policy Revision 2 (September 2002)

Case ID No. 36736

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102078169

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

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)	16	80%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	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)	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) 120%

>> 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 Respondent reported 15 months of self-reported effluent violations, was issued one Notice of Violation for violations that are considered same or similar violations, and was issued two Agreed Orders containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 120%

Screening Date 27-Oct-2008 Respondent City of Kennard Case ID No. 36736 Reg. Ent. Reference No. RN102078169 Media [Statute] Water Quality Enf. Coordinator Heather Brister Violation Number <input type="text" value="1"/> Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011474001, Effluent Limitations and Monitoring Requirements No. 1 Violation Description Failed to maintain compliance with the permit effluent limits of 30 milligrams per liter ("mg/L") daily average concentration for 5-day biochemical oxygen demand ("BOD5"), as documented during an investigation conducted on June 25, 2008. Specifically, the Respondent reported 40.7 mg/L BOD5 during April 2008 and 34.7 mg/L BOD5 during May 2008.	Docket No. 2008-1710-MWD-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 12, 2008</i>																							
Base Penalty <input type="text" value="\$1,000"/>																								
>> Environmental, Property and Human Health Matrix																								
OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2"></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td></td> <th>Release</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td></td> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input checked="" type="checkbox"/></td> <td rowspan="2">Percent <input type="text" value="10%"/></td> </tr> <tr> <td></td> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>			Harm					Release	Major	Moderate	Minor			Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	Percent <input type="text" value="10%"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Matrix Notes	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2"></td> <th>Falsification</th> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td></td> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td>Percent <input type="text" value="0%"/></td> </tr> </table> <p>A simplified model was used to evaluate BOD5 and flow 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 that are protective of human health or environmental receptors.</p>			Falsification	Major	Moderate	Minor				<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>									
		Falsification	Major	Moderate	Minor																			
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single event	<input type="text"/>																							
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Good Faith Efforts to Comply																								
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Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>																					
N/A	<input checked="" type="checkbox"/>	<i>(mark with x)</i>																						
Notes	The Respondent does not meet the good faith criteria for this violation.																							
Economic Benefit (EB) for this violation																								
Statutory Limit Test																								
Estimated EB Amount	<input type="text" value="\$793"/>	Violation Final Penalty Total	<input type="text" value="\$2,200"/>																					
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$2,200"/>																						

Economic Benefit Worksheet

Respondent City of Kennard
Case ID No. 36736
Reg. Ent. Reference No. RN102078169
Media Water Quality
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
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No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	30-Apr-2008	30-Nov-2009	1.59	\$793	n/a	\$793

Notes for DELAYED costs
 Estimated cost to determine the cause of non-compliance and to make necessary adjustments to achieve compliance with the permitted effluent limits. Date Required is the initial month of noncompliance. Final Date is the expected date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 \$10,000

TOTAL \$793

Screening Date 27-Oct-2008	Docket No. 2008-1710-MWD-E	PCW												
Respondent City of Kennard		<small>Policy Revision 2 (September 2002)</small>												
Case ID No. 36736		<small>PCW Revision June 12, 2008</small>												
Reg. Ent. Reference No. RN102078169														
Media [Statute] Water Quality														
Enf. Coordinator Heather Brister														
Violation Number <input type="text" value="2"/>														
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and TPDES Permit No. WQ0011474001, Monitoring and Reporting Requirements No. 7.c													
Violation Description	Failed to submit noncompliance notification reports for effluent violations that deviated from the permitted effluent limits by more than 40%, as documented during an investigation conducted on June 25, 2008. Specifically, the BOD5 values for the month of April 2006, exceeded the permitted limits by more than 40% and were not reported to TCEQ.													
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OR	Harm													
	Release Major Moderate Minor													
	Actual <input type="text"/> <input type="text"/> <input type="text"/>													
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	<input type="text"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Percent <input type="text" value="10%"/>												
Matrix Notes	<input type="text" value="100% of the permit requirement was not met."/>													
	Adjustment	<input type="text" value="\$9,000"/>												
		<input type="text" value="\$1,000"/>												
Violation Events														
Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="793"/> Number of violation days												
<small>mark only one with an x</small>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input checked="" type="checkbox"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input checked="" type="checkbox"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
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semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input checked="" type="checkbox"/>													
	<input type="text" value="One single event is recommended."/>													
Good Faith Efforts to Comply	<input type="text" value="25.0%"/> Reduction	<input type="text" value="\$250"/>												
	Before NOV NOV to EDPRP/Settlement Offer													
Extraordinary	<input type="text"/>													
Ordinary	<input checked="" type="checkbox"/>													
N/A	<input type="text"/> (mark with x)													
Notes	<input type="text" value="The Respondent achieved compliance on July 1, 2008."/>													
	Violation Subtotal	<input type="text" value="\$750"/>												
Economic Benefit (EB) for this violation														
Estimated EB Amount	<input type="text" value="\$11"/>	Violation Final Penalty Total <input type="text" value="\$1,950"/>												
	Statutory Limit Test													
	This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,950"/>													

Economic Benefit Worksheet

Respondent City of Kennard
Case ID No. 36736
Reg. Ent. Reference No. RN102078169
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$100	30-Apr-2006	1-Jul-2008	2.17	\$11	n/a	\$11
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 cost to update operational guidance and conduct employee training to ensure that non-compliance notifications are submitted. Date Required is the date the first report was due. Final Date is the 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 \$100

TOTAL \$11

Screening Date 27-Oct-2008 Respondent City of Kennard Case ID No. 36736 Reg. Ent. Reference No. RN102078169 Media [Statute] Water Quality Enf. Coordinator Heather Brister Violation Number 3 Rule Cite(s) 30 Tex. Admin. Code § 319.7(a) and TPDES Permit No. WQ0011474001, Monitoring and Reporting Requirements No. 3(c)(i)	Docket No. 2008-1710-MWD-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision June 12, 2008</i>																			
Violation Description Failed to maintain records of monitoring activities, which includes the identity of the individual who made the measurement, as documented during an investigation conducted on June 25, 2008. Specifically, personnel were not recording the identity of the person calibrating the dissolved oxygen meter.																				
Base Penalty \$10,000																				
>> Environmental, Property and Human Health Matrix																				
OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Release</td> <td colspan="3" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td rowspan="2" style="text-align: right; vertical-align: middle;">Percent <input type="text" value="0%"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> </table>	Release	Harm					Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
Release	Harm																			
	Major	Moderate	Minor																	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>																
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
>> Programmatic Matrix																				
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Falsification	Major	Moderate	Minor																	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	Percent <input type="text" value="1%"/>																
Matrix Notes	At least 75% of the rule requirement was met.																			
Adjustment \$9,900																				
\$100																				
Violation Events																				
Number of Violation Events <input type="text" value="1"/>	Number of violation days <input type="text" value="6"/>																			
mark only one with an x	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">daily</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">monthly</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">quarterly</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">semiannual</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">annual</td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">single event</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input checked="" type="checkbox"/>							
daily	<input type="text"/>																			
monthly	<input type="text"/>																			
quarterly	<input type="text"/>																			
semiannual	<input type="text"/>																			
annual	<input type="text"/>																			
single event	<input checked="" type="checkbox"/>																			
Violation Base Penalty \$100																				
One single event is recommended based on documentation of the violation during the June 25, 2008 investigation.																				
Good Faith Efforts to Comply																				
25.0% Reduction <input type="text" value="\$25"/>																				
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDP RP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Notes</td> <td colspan="2" style="text-align: center;"> The Respondent achieved compliance on July 1, 2008. </td> </tr> </table>		Before NOV	NOV to EDP RP/Settlement Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>	N/A	<input type="text"/>	<input type="text"/>	Notes	The Respondent achieved compliance on July 1, 2008.					
	Before NOV	NOV to EDP RP/Settlement Offer																		
Extraordinary	<input type="text"/>	<input type="text"/>																		
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>																		
N/A	<input type="text"/>	<input type="text"/>																		
Notes	The Respondent achieved compliance on July 1, 2008.																			
Violation Subtotal \$75																				
Economic Benefit (EB) for this violation																				
Estimated EB Amount <input type="text" value="\$0"/>																				
Statutory Limit Test																				
Violation Final Penalty Total \$195																				
This violation Final Assessed Penalty (adjusted for limits) \$195																				

Economic Benefit Worksheet

Respondent City of Kennard
Case ID No. 36736
Reg. Ent. Reference No. RN102078169
Media Water Quality
Violation No. 3

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	25-Jun-2008	1-Jul-2008	0.02	\$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 cost to update operational guidance and conduct employee training to ensure that records of monitoring activities are properly documented. Date Required is the date of the investigation. Final Date is the date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 \$250

TOTAL \$0

<p>Screening Date 27-Oct-2008 Respondent City of Kennard Case ID No. 36736 Reg. Ent. Reference No. RN102078169 Media [Statute] Water Quality Enf. Coordinator Heather Brister Violation Number 4 Rule Cite(s) 30 Tex. Admin. Code § 305.125(5), Tex. Water Code § 26.121(a), and TPDES Permit No. WQ0011474001, Permit Conditions No. 2.d Violation Description Failed to prevent an unauthorized discharge of sludge into or adjacent to water in the state, as documented during an investigation conducted on June 25, 2008. Specifically, a light gray scum layer was observed on the stream bottom immediately downstream of the outfall and extending approximately 30 feet downstream. The sample results indicated that the upstream sample contained 0.50 mg/L Ammonia as Nitrogen ("NH3N") in Leachate and 1.56 mg/L of Total Kjeldahl Nitrogen ("TKN") in Leachate. The downstream sample contained 5.26 mg/L of NH3N in Leachate and 6.72 mg/L TKN in Leachate.</p>	<p style="text-align: right;">PCW Policy Revision 2 (September 2002) PCW Revision June 12, 2008</p> <p>Docket No. 2008-1710-MWD-E</p>															
Base Penalty \$10,000																
>> Environmental, Property and Human Health Matrix																
OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td></td> <td></td> <td style="text-align: center;">x</td> </tr> <tr> <td style="text-align: center;">Potential</td> <td></td> <td></td> <td></td> </tr> </table> <p style="text-align: right;">Percent 10%</p>	Harm			Release	Major	Moderate	Minor	Actual			x	Potential			
Harm																
Release	Major	Moderate	Minor													
Actual			x													
Potential																
>> Programmatic Matrix																
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </table> <p style="text-align: right;">Percent 0%</p>	Falsification	Major	Moderate	Minor											
Falsification	Major	Moderate	Minor													
Matrix Notes	Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.															
Adjustment \$9,000																
\$1,000																
Violation Events																
Number of Violation Events	2	138	Number of violation days													
mark only one with an x	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td></td></tr> <tr><td style="text-align: center;">monthly</td><td></td></tr> <tr><td style="text-align: center;">quarterly</td><td style="text-align: center;">x</td></tr> <tr><td style="text-align: center;">semiannual</td><td></td></tr> <tr><td style="text-align: center;">annual</td><td></td></tr> <tr><td style="text-align: center;">single event</td><td></td></tr> </table>	daily		monthly		quarterly	x	semiannual		annual		single event		Violation Base Penalty	\$2,000	
daily																
monthly																
quarterly	x															
semiannual																
annual																
single event																
Two quarterly events are recommended from investigation date (June 25, 2008) to date of screening (October 27, 2008).																
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			\$2,000													
Economic Benefit (EB) for this violation		Statutory Limit Test														
Estimated EB Amount	\$51	Violation Final Penalty Total	\$4,400													
This violation Final Assessed Penalty (adjusted for limits)			\$4,400													

Economic Benefit Worksheet

Respondent City of Kennard
Case ID No. 36736
Reg. Ent. Reference No. RN102078169
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	25-Jun-2008	30-Jun-2009	1.01	\$51	n/a	\$51

Notes for DELAYED costs

Estimated cost to remove and properly dispose of sludge from the receiving stream. Date Required is the date of the investigation. Final Date is the anticipated 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

\$1,000

TOTAL

\$51

10	06/28/2004	(357196)
11	07/08/2004	(276926)
12	08/16/2004	(357198)
13	10/14/2004	(357197)
14	01/14/2005	(384713)
15	01/17/2005	(384714)
16	01/17/2005	(384715)
17	02/21/2005	(422678)
18	03/14/2005	(384711)
19	04/12/2005	(422675)
20	04/15/2005	(374955)
21	05/23/2005	(422676)
22	06/13/2005	(422677)
23	07/22/2005	(443584)
24	08/22/2005	(443585)
25	09/08/2005	(404623)
26	09/16/2005	(443586)
27	10/17/2005	(473590)
28	11/21/2005	(473591)
29	12/19/2005	(473592)
30	01/13/2006	(473593)
31	02/27/2006	(473588)
32	03/17/2006	(473589)
33	04/19/2006	(501673)
34	05/25/2006	(501674)
35	06/22/2006	(501675)
36	07/20/2006	(523938)
37	08/30/2006	(523939)
38	09/21/2006	(523940)
39	10/19/2006	(548953)
40	12/07/2006	(548954)
41	12/22/2006	(548955)
42	01/24/2007	(548956)
43	02/20/2007	(582311)
44	03/22/2007	(542553)
45	04/30/2007	(582312)
46	05/31/2007	(582313)
47	07/02/2007	(603555)
48	07/30/2007	(603556)
49	08/13/2007	(603557)
50	09/13/2007	(603558)
51	10/18/2007	(622110)
52	12/03/2007	(622111)
53	12/27/2007	(622112)
54	02/04/2008	(673924)
55	04/02/2008	(692182)
56	05/05/2008	(692183)
57	07/07/2008	(692181)
58	08/20/2008	(685500)

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

Date: **10/31/2003** (308293)
 Self Report? YES Classification: 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: **11/30/2003** (308294)
 Self Report? YES Classification: 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: 03/31/2004 (308285)
 Self Report? YES Classification: 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: 08/31/2004 (384712)
 Self Report? YES Classification: 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: 09/30/2004 (384713)
 Self Report? YES Classification: 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: 11/30/2004 (384715)
 Self Report? YES Classification: 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: 04/13/2005 (374955)
 Self Report? NO Classification: Moderate
 Rqmt Prov: PERMIT EL&MR 1
 Description: Failure by the City of Kennard to comply with effluent limitations for Biochemical Oxygen Demand.

Self Report? NO Classification: Minor
 Rqmt Prov: PERMIT M&RR 1
 Description: Failure by the City of Kennard to submit the December 2004 Discharge Monitoring Report (DMR) before the 20th day of the following month.

Self Report? NO Classification: Moderate
 Rqmt Prov: PERMIT M&RR 7c
 Description: Failure by the City of Kennard to submit in writing a report to the Region 10 office and the Manager of the Water and Multimedia Section (MC 149) of the Enforcement Division for exceeding any permit limitation by greater than 40% within 5 days of becoming aware.

Date: 02/28/2006 (473589)
 Self Report? YES Classification: 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: 03/31/2006 (501673)
 Self Report? YES Classification: 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: 04/30/2006 (501674)
 Self Report? YES Classification: 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: 05/31/2006 (501675)
 Self Report? YES Classification: 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: 03/31/2007 (582312)
Self Report? YES Classification: 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: 07/31/2007 (603557)
Self Report? YES Classification: 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: 09/30/2007 (622110)
Self Report? YES Classification: 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: 04/30/2008
Self Report? YES Classification: 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: 05/31/2008
Self Report? YES Classification: 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

- 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
CITY OF KENNARD
RN102078169

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2008-1710-MWD-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 City of Kennard ("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 presented this agreement to the Commission.

The City 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 City 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 City.

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

I. FINDINGS OF FACT

1. The City owns and operates a wastewater treatment facility located on the southeast side of Kennard on a 27-acre tract, on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357 in Houston County, Texas (the "Facility").

2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on June 25, 2008, TCEQ staff documented that the 5-day biochemical oxygen demand ("BOD₅") daily average concentration during April 2008 was 40.7 milligrams per liter ("mg/L") and during May 2008 was 34.7 mg/L, based on the self-reported discharge monitoring reports ("DMRs"). The permit effluent limit for BOD₅ daily average concentration is 30 mg/L.
4. During an investigation on June 25, 2008, TCEQ staff documented that the City did not notify the TCEQ when values for BOD₅ deviated from the permitted effluent limitation by more than 40% during the month of April 2006.
5. During an investigation on June 25, 2008, TCEQ staff documented that personnel were not recording the identity of the person calibrating the dissolved oxygen meter.
6. During an investigation on June 25, 2008, TCEQ staff documented a light gray scum layer on the stream bottom immediately downstream of the outfall and extending approximately 30 feet downstream. The sample results indicated that the upstream sample contained 0.50 mg/L Ammonia as Nitrogen ("NH₃N") in Leachate and 1.56 mg/L of Total Kjeldahl Nitrogen ("TKN") in Leachate. The downstream sample contained 5.26 mg/L of NH₃N in Leachate and 6.72 mg/L TKN in Leachate.

7. The City received notice of the violations on August 25, 2008.
8. The Executive Director recognizes that by July 1, 2008, the City implemented the following corrective measures at the Facility:
 - a. Started properly maintaining records of monitoring activities by recording the identity of the person calibrating the dissolved oxygen meter; and
 - b. Updated operational guidance and conducted employee training to ensure that proper notification is submitted to TCEQ when the effluent deviates from the permitted limits by more than 40%, and to ensure that records of monitoring activities are properly documented.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the City failed to maintain compliance with the permit effluent limits, in violation of 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a), and TPDES Permit No. WQ0011474001, Effluent Limitations and Monitoring Requirements No. 1.

3. As evidenced by Findings of Fact No. 4, the City failed to submit noncompliance notification reports for effluent violations that deviated from the permitted effluent limits by more than 40%, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0011474001, Monitoring and Reporting Requirements No. 7.c.
4. As evidenced by Findings of Fact No. 5, the City failed to maintain records of monitoring activities, in violation of 30 TEX. ADMIN. CODE § 319.7(a) and TPDES Permit No. WQ0011474001, Monitoring and Reporting Requirements No. 3(c)(ii).
5. As evidenced by Findings of Fact No. 6, the City failed to prevent an unauthorized discharge of sludge into or adjacent to water in the state, in violation of 30 TEX. ADMIN. CODE § 305.125(5), TEX. WATER CODE § 26.121(a), and TPDES Permit No. WQ0011474001, Permit Conditions No. 2.d.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City 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.
7. An administrative penalty in the amount of Eight Thousand Seven Hundred Forty-Five Dollars (\$8,745) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The City has paid the Eight Thousand Seven Hundred Forty-Five Dollar (\$8,745) administrative penalty.

III. ORDERING PROVISIONS

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

1. The City is assessed an administrative penalty in the amount of Eight Thousand Seven Hundred Forty-Five Dollars (\$8,745) as set forth in Section II, Paragraph 7 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City'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: City of Kennard, Docket No. 2008-1710-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. The City shall undertake the following technical requirements:

- a. Within 90 days after the effective date of this Agreed Order, remove and properly dispose of the sludge from the stream, evaluate the causes of the unauthorized discharge of sludge from the outfall, and identify the necessary corrective actions to prevent recurrence;
- b. Within 105 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 No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the certification language described below in Ordering Provision No. 2.c, and
- c. Within 180 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0011474001, 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

The following information was obtained from a review of the files of the [redacted] and [redacted] and is being provided to you for your information.

[redacted] was born on [redacted] at [redacted] and is currently residing at [redacted]. [redacted] is a [redacted] and is currently employed as a [redacted] at [redacted].

[redacted] was born on [redacted] at [redacted] and is currently residing at [redacted]. [redacted] is a [redacted] and is currently employed as a [redacted] at [redacted].

[redacted] was born on [redacted] at [redacted] and is currently residing at [redacted]. [redacted] is a [redacted] and is currently employed as a [redacted] at [redacted].

[redacted] was born on [redacted] at [redacted] and is currently residing at [redacted]. [redacted] is a [redacted] and is currently employed as a [redacted] at [redacted].

CONFIDENTIAL (11/13/00)

[redacted]
[redacted]
[redacted]

[redacted]
[redacted]
[redacted]

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. 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 City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
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7. 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.
 8. 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.
 9. 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.
 10. 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.

The first part of the document discusses the general principles of the proposed system. It is intended to provide a comprehensive overview of the various aspects involved in the implementation of the new regulations. The following sections will detail the specific measures to be taken, the responsibilities of the various departments, and the timeline for the completion of the project.

The second part of the document outlines the specific measures to be taken. These include the establishment of a central committee to oversee the implementation, the appointment of a special officer to coordinate the various departments, and the introduction of new regulations to ensure the smooth operation of the system. The following sections will detail the specific measures to be taken, the responsibilities of the various departments, and the timeline for the completion of the project.

The third part of the document outlines the responsibilities of the various departments. It is intended to provide a comprehensive overview of the various aspects involved in the implementation of the new regulations. The following sections will detail the specific measures to be taken, the appointment of a special officer to coordinate the various departments, and the introduction of new regulations to ensure the smooth operation of the system.

The fourth part of the document outlines the timeline for the completion of the project. It is intended to provide a comprehensive overview of the various aspects involved in the implementation of the new regulations. The following sections will detail the specific measures to be taken, the appointment of a special officer to coordinate the various departments, and the introduction of new regulations to ensure the smooth operation of the system.

The fifth part of the document outlines the various aspects involved in the implementation of the new regulations. It is intended to provide a comprehensive overview of the various aspects involved in the implementation of the new regulations. The following sections will detail the specific measures to be taken, the appointment of a special officer to coordinate the various departments, and the introduction of new regulations to ensure the smooth operation of the system.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

3/9/2009
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Kennard. I am authorized to agree to the attached Agreed Order on behalf of City of Kennard, 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, City of Kennard 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.


Signature

01-15-2009
Date

MIKE DECKARD
Name (Printed or typed)
Authorized Representative of
City of Kennard

CITY ADMINISTRATOR
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.

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Handwritten signature or name.

Handwritten signature or name.

Handwritten text or date.

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