

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

Page 1 of 3

**DOCKET NO.:** 2009-0161-WQ-E **TCEQ ID:** RN105396527 **CASE NO.:** 37055**RESPONDENT NAME:** Reynolds & Kay, Ltd.

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Grande Boulevard Extension Phase 2B, located between Farm-to-Market Road 756 and State Highway 110, approximately six miles southeast of the Smith County Courthouse, Tyler, Smith County</p> <p><b>TYPE OF OPERATION:</b> Highway construction site</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on September 2, 2008, alleging that sediment from the construction site had completely filled in the creek located on the complainant's property. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 24, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732  <b>TCEQ Enforcement Coordinator:</b> 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  <b>Respondent:</b> Mr. L. F. Kay, President, L.F. Kay Management, LLC, General Partner, P.O. Box 88, Tyler, Texas 75710  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> September 2, 2008</p> <p><b>Date of Investigation Relating to this Case:</b> September 10 and December 2, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> December 30, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>1) Failure to design and maintain erosion and sediment controls in effective operating condition and to remove sediment accumulations that escape the Site at a frequency that minimizes off-site impacts, resulting in an unauthorized discharge. The investigator observed that a single row of silt fence that had been installed along the bottom sides on the road was overwhelmed and at full capacity. Sediment was flowing around and through a concrete rock filter, all of which discharged into Shackleford Creek, and the concrete culvert was approximately one third full of sediment. Sediment deposits measured approximately 12 inches deep around trees along the creek bank. The original stream width of four feet had become a sandflat of approximately 30 feet in width, altering the physical and biological characteristics of the stream and rendering the tributary unusable to aquatic life and riparian vegetation. The creek upstream of the discharge was transparent and not impacted [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR15IZ24, Part III, Sections F(6)(a) and F(6)(d)].</p>	<p><b>Total Assessed:</b> \$26,450</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$13,225</p> <p><b>Total Paid to General Revenue:</b> \$13,225</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b> Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a. By February 13, 2009, the Respondent increased the original sediment controls by 13,219 linear feet of silt fencing, 309 linear feet of rock filter dams, 14,520 square yards of temporary cellular fiber mulch seeding, and 9,680 square yards of temporary seeding; and</p> <p>b. By January 16, 2009, the Respondent installed controls to minimize the off-site tracking of sediment and began sweeping roads as needed.</p> <p><b>Ordering Provisions:</b></p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease all unauthorized discharges of sediment from the Site.</p> <p>b. Within 30 days after the effective date of this Agreed order:</p> <p>i. Evaluate the effectiveness of the existing sediment and erosion controls to ensure that they can sufficiently retain sediment on-site to the extent practicable with consideration for local topography, soil type, and rainfall. Based on this evaluation, the Respondent shall begin maintaining, in effective operating condition, all sediment control measures, including repairing or replacing all silt fences and installing additional sediment controls to prevent sediment from escaping the Site; and</p> <p>ii. Remove the sediment from the sedimentation basin and silt fence to restore them to their full capacity and</p>

<p>2) Failure to remove sediment from sediment controls before the design capacity has been reduced by 50%. Specifically, on December 2, 2008, the investigator documented that the sediment basin had reached 100% capacity [30 TEX. ADMIN. CODE § 305.125(1) and TPDES CGP No. TXR15IZ24, Part III, Section F(2)(a)(iii)].</p> <p>3) Failure to minimize vehicles from tracking sediment off-site. Specifically, the investigator documented that there were no control measures in place to minimize the tracking of sediment off-site from vehicles at the Site entrance on Rhones Quarter Road [30 TEX. ADMIN. CODE § 305.125(1) and TPDES CGP No. TXR15IZ24, Part III, Section F(5)(a)].</p>		<p>properly dispose of the sediment at a TCEQ authorized location.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a and 2.b;</p> <p>d. Within 120 days after the effective date of this Agreed Order, remove visible accumulations of sediment from Shackleford Creek and submit a written statement that the sediment material was removed and relocated or disposed of at a TCEQ authorized location, including a description of the specific location where the sediment was taken, the amount of material transported, and method of sediment removal; and</p> <p>e. Within 135 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.d. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>
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Additional ID No(s): TXR15IZ24



Attachment A

Docket Number: 2009-0161-WQ-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Reynolds & Kay, Ltd.

**Payable Penalty Amount:** Twenty-Six Thousand Four Hundred Fifty Dollars (\$26,450)

**SEP Amount:** Thirteen Thousand Two Hundred Twenty-Five Dollars (\$13,225)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or Wastewater Treatment Assistance

**Location of SEP:** Smith County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the Third-Party Recipient shall repair or replace failing water systems or on-site wastewater systems for low income homeowners. The Third-Party Recipient shall use SEP funds to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems. The Third-Party recipient shall use a consistent and documented system for determining eligible participants.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination.



C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive, Suite 510  
Bryan, Texas 77802-2700

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to Texas Commission on Environmental Quality and mailed to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088



The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.





Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	5-Jan-2009	Screening	15-Jan-2009	EPA Due	
	PCW	22-Jan-2009				

## RESPONDENT/FACILITY INFORMATION

Respondent	Reynolds & Kay, Ltd.		
Reg. Ent. Ref. No.	RN105396527		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	37055	No. of Violations	3
Docket No.	2009-0161-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Brister
Admin. Penalty \$ Limit Minimum	\$0	EC's Team	Enforcement Team 1
Maximum	\$10,000		

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$26,500

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement **Subtotals 2, 3, & 7** \$0

Notes No change due to average performer classification.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$50Economic Benefit 0.0% Enhancement\* **Subtotal 6** \$0

Total EB Amounts	\$819
Approx. Cost of Compliance	\$17,500

 \*Capped at the Total EB \$ Amount
SUM OF SUBTOTALS 1-7 **Final Subtotal** \$26,450OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$26,450STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$26,450DEFERRAL 0.0% Reduction **Adjustment** \$0

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** \$26,450

Screening Date 15-Jan-2009

Docket No. 2009-0161-WQ-E

PCW

Respondent Reynolds &amp; Kay, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 37055

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105396527

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

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

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No change due to average performer classification.

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

<b>Screening Date</b> 15-Jan-2009	<b>Docket No.</b> 2009-0161-WQ-E	<b>PCW</b>														
<b>Respondent</b> Reynolds & Kay, Ltd.	<small>Policy Revision 2 (September 2002)</small>															
<b>Case ID No.</b> 37055	<small>PCW Revision October 30, 2008</small>															
<b>Reg. Ent. Reference No.</b> RN105396527																
<b>Media [Statute]</b> Water Quality																
<b>Enf. Coordinator</b> Heather Brister																
<b>Violation Number</b> 1																
<b>Rule Cite(s)</b>	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR15I224, Part III, Sections F(6)(a) and F(6)(d)															
<b>Violation Description</b>	Failed to design and maintain erosion and sediment controls in effective operating condition and to remove sediment accumulations that escape the Site at a frequency that minimizes off-site impacts, resulting in an unauthorized discharge, as documented during an investigation conducted on September 10, 2008. The investigator observed that a single row of silt fence that had been installed along the bottom sides on the road was overwhelmed and at full capacity. Sediment was flowing around and through a concrete rock filter, all of which discharged into Shackleford Creek, and the concrete culvert was approximately one third full of sediment. Sediment deposits measured approximately 12 inches deep around trees along the creek bank. The original stream width of four feet had become a sandflat of approximately 30 feet in width, altering the physical and biological characteristics of the stream and rendering the tributary unusable to aquatic life and riparian vegetation. The creek upstream of the discharge was transparent and not impacted.															
<b>Base Penalty</b>		\$10,000														
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																
OR	<b>Release</b>	<b>Harm</b>														
		Major      Moderate      Minor														
	Actual	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 15px; text-align: center;">x</td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> </table>	x													
x																
	Potential	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> </table>														
		<b>Percent</b> 50%														
<b>&gt;&gt; Programmatic Matrix</b>																
	<b>Falsification</b>	<b>Major</b> <b>Moderate</b> <b>Minor</b>														
	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> </table>									<b>Percent</b> 0%						
<b>Matrix Notes</b>	Human health or the environment has been exposed to pollutants which exceed protective levels as a result of this violation.															
<b>Adjustment</b>		\$5,000														
		\$5,000														
<b>Violation Events</b>																
	<b>Number of Violation Events</b>	5														
		127														
	<b>Number of violation days</b>															
<small>mark only one with an x</small>	<table border="1" style="border-collapse: collapse;"> <tr><td style="width: 30px; height: 15px;">daily</td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 30px; height: 15px;">weekly</td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 30px; height: 15px;">monthly</td><td style="width: 50px; height: 15px; text-align: center;">x</td></tr> <tr><td style="width: 30px; height: 15px;">quarterly</td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 30px; height: 15px;">semiannual</td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 30px; height: 15px;">annual</td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 30px; height: 15px;">single event</td><td style="width: 50px; height: 15px;"></td></tr> </table>	daily		weekly		monthly	x	quarterly		semiannual		annual		single event		<b>Violation Base Penalty</b> \$25,000
daily																
weekly																
monthly	x															
quarterly																
semiannual																
annual																
single event																
Five monthly events are recommended from the first investigation date (September 10, 2008) to the date of screening (January 15, 2009).																
<b>Good Faith Efforts to Comply</b>																
	<b>0.0% Reduction</b>	\$0														
	<small>Before NOV      NOV to EDPRP/Settlement Offer</small>															
Extraordinary	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> </table>															
Ordinary	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> <tr><td style="width: 50px; height: 15px;"></td><td style="width: 50px; height: 15px;"></td></tr> </table>															
N/A	x      (mark with x)															
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.															
<b>Violation Subtotal</b>		\$25,000														
<b>Economic Benefit (EB) for this violation</b>																
<b>Statutory Limit Test</b>																
<b>Estimated EB Amount</b>	\$541	<b>Violation Final Penalty Total</b> \$25,000														
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		\$25,000														

## Economic Benefit Worksheet

**Respondent** Reynolds & Kay, Ltd.  
**Case ID No.** 37055  
**Reg. Ent. Reference No.** RN105396527  
**Media** Water Quality  
**Violation No.** 1

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
<b>Delayed Costs</b>							
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	\$10,000	10-Sep-2008	10-Oct-2009	1.08	\$541	n/a	\$541
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated cost to remove and properly dispose of the sediment from the affected areas. Date required is the investigation date. 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** \$10,000 **TOTAL** \$541

<b>Screening Date</b> 15-Jan-2009	<b>Docket No.</b> 2009-0161-WQ-E	<b>PCW</b>
<b>Respondent</b> Reynolds & Kay, Ltd.	<small>Policy Revision 2 (September 2002)</small>	
<b>Case ID No.</b> 37055	<small>PCW Revision October 30, 2008</small>	
<b>Reg. Ent. Reference No.</b> RN105396527		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Heather Brister		
<b>Violation Number</b>	2	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 305.125(1) and TPDES CGP No. TXR15IZ24, Part III, Section F(2)(a)(iii)	
<b>Violation Description</b>	Failed to remove sediment from sediment controls before the design capacity has been reduced by 50%. Specifically, on December 2, 2008, the investigator documented that the sediment basin had reached 100% capacity.	
<b>Base Penalty</b>	\$10,000	

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

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>		<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="10%"/>	

**>> Programmatic Matrix**

<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of this violation.			
				<b>Adjustment</b> <input type="text" value="\$9,000"/>

**Adjustment**

**Violation Events**

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="44"/>	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 checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>
<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>		
One quarterly event is recommended from the investigation date (December 2, 2008) to the date of screening (January 15, 2009).		

**Good Faith Efforts to Comply**  Reduction

<small>Before NOV</small>		<small>NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.		
<b>Violation Subtotal</b> <input type="text" value="\$1,000"/>			

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$256"/>	Violation Final Penalty Total <input type="text" value="\$1,000"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,000"/>	

## Economic Benefit Worksheet

**Respondent** Reynolds & Kay, Ltd.  
**Case ID No.** 37055  
**Reg. Ent. Reference No.** RN105396527  
**Media** Water Quality  
**Violation No.** 2

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$6,000	2-Dec-2008	10-Oct-2009	0.85	\$256	n/a	\$256
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly remove and dispose of sediment from the sediment basin. Date Required is the investigation date. 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

\$6,000

TOTAL

\$256

<b>Screening Date</b> 15-Jan-2009	<b>Docket No.</b> 2009-0161-WQ-E	<b>PCW</b>		
<b>Respondent</b> Reynolds & Kay, Ltd.		<small>Policy Revision 2 (September 2002)</small>		
<b>Case ID No.</b> 37055		<small>PCW Revision October 30, 2008</small>		
<b>Reg. Ent. Reference No.</b> RN105396527				
<b>Media [Statute]</b> Water Quality				
<b>Enf. Coordinator</b> Heather Brister				
<b>Violation Number</b>	3			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 305.125(1) and TPDES CGP No. TXR15IZ24, Part III, Section F(5)(a)			
<b>Violation Description</b>	Failed to minimize vehicles from tracking sediment off-site, as documented during an investigation conducted on December 2, 2008. Specifically, the investigator documented that there were no control measures in place to minimize the tracking of sediment off-site from vehicles at the Site entrance on Rhones Quarter Road.			
	<b>Base Penalty</b>	\$10,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>
		<b>Percent</b>	5%	
<b>&gt;&gt; Programmatic Matrix</b>				
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
		<b>Percent</b>	0%	
<b>Matrix Notes</b>	Human health or the environment could be exposed to insignificant amounts of pollutants which would not exceed protective levels as a result of this violation.			
	<b>Adjustment</b>	\$9,500		
		\$500		
<b>Violation Events</b>				
	<b>Number of Violation Events</b>	1	44	<b>Number of violation days</b>
	<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	<input checked="" type="text" value="x"/>	
			<b>Violation Base Penalty</b>	\$500
	One single event is recommended, based on documentation of the violation during the December 2, 2008 investigation.			
<b>Good Faith Efforts to Comply</b>		10.0% Reduction	\$50	
		<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>	
	<b>Extraordinary</b>	<input type="text"/>	<input type="text"/>	
	<b>Ordinary</b>	<input type="text"/>	<input checked="" type="text" value="x"/>	
	N/A	<small>(mark with x)</small>		
<b>Notes</b>	The Respondent achieved compliance on January 16, 2009.			
		<b>Violation Subtotal</b>	\$450	
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
	<b>Estimated EB Amount</b>	\$22	<b>Violation Final Penalty Total</b>	\$450
		<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$450		

## Economic Benefit Worksheet

**Respondent** Reynolds & Kay, Ltd.  
**Case ID No.** 37055  
**Reg. Ent. Reference No.** RN105396527  
**Media** Water Quality  
**Violation No.** 3

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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)	\$1,500	2-Oct-2008	16-Jan-2009	0.29	\$22	n/a	\$22

Notes for DELAYED costs

Estimated cost to install controls to minimize the off-site tracking of sediment and to have the roads swept as needed. Date Required is the investigation date. 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 \$1,500

TOTAL \$22

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602406472 Reynolds & Kay, Ltd. Classification: AVERAGE Rating: 3.06  
Regulated Entity: RN105396527 GRANDE BOULEVARD EXTENSION Classification: AVERAGE Site Rating: 3.01  
PHASE 2B BY DEFAULT

ID Number(s): STORMWATER PERMIT TXR15IZ24  
Location: Located between FM 756 and State Hwy 110,  
approximately 6 mi se of the Smith County Courthouse  
Tyler, Smith County, Texas

TCEQ Region: REGION 05 - TYLER  
Date Compliance History Prepared: January 13, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 13, 2004 to January 13, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Heather Brister Phone: 254/761-3034

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. if Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
- 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.)   | N/A |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.)  | N/A |
| 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  
REYNOLDS & KAY, LTD.  
RN105396527

§  
§  
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§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2009-0161-WQ-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 Reynolds & Kay, Ltd. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. 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 operates a highway construction site located between Farm-to-Market Road 756 and State Highway 110, approximately six miles southeast of the Smith County Courthouse, Tyler, Smith County, Texas (the "Site").

2. The Respondent has discharged other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on September 10, 2008, TCEQ staff documented that a single row of silt fence, that had been installed along the bottom sides on the road, was overwhelmed and at full capacity. Sediment was flowing around and through a concrete rock filter, all of which discharged into Shackleford Creek, and the concrete culvert was approximately one third full of sediment. Sediment deposits measured approximately 12 inches deep around trees along the creek bank. The original stream width of four feet had become a sandflat of approximately 30 feet in width, altering the physical and biological characteristics of the stream and rendering the tributary unusable to aquatic life and riparian vegetation. The creek upstream of the discharge was transparent and not impacted.
4. During an investigation on December 2, 2008, TCEQ staff documented that the sediment basin had reached 100% capacity.
5. During an investigation on December 2, 2008, TCEQ staff documented that there were no control measures in place to minimize the tracking of sediment off-site from vehicles at the Site entrance on Rhones Quarter Road.
6. The Respondent received notice of the violations on January 5, 2009.
7. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
  - a. By February 13, 2009, the Respondent increased the original sediment controls by 13,219 linear feet of silt fencing, 309 linear feet of rock filter dams, 14,520 square yards of temporary cellular fiber mulch seeding, and 9,680 square yards of temporary seeding; and
  - b. By January 16, 2009, the Respondent installed controls to minimize the off-site tracking of sediment and began sweeping roads as needed.

## II. CONCLUSIONS OF LAW

1. The Respondent 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 Respondent failed to design and maintain erosion and sediment controls in effective operating condition and to remove sediment accumulations that escape the Site at a frequency that minimizes off-site impacts, resulting in an unauthorized discharge, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit ("CGP") No. TXR15IZ24, Part III, Sections F(6)(a) and F(6)(d).

3. As evidenced by Findings of Fact No. 4, the Respondent failed to remove sediment from sediment controls before the design capacity has been reduced by 50%, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES CGP No. TXR15IZ24, Part III, Section F(2)(a)(iii).
4. As evidenced by Findings of Fact No. 5, the Respondent failed to minimize vehicles from tracking sediment off-site, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES CGP No. TXR15IZ24, Part III, Section F(5)(a).
5. Pursuant to TEX. WATER CODE § 7.051, 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.
6. An administrative penalty in the amount of Twenty-Six Thousand Four Hundred Fifty Dollars (\$26,450) 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 Respondent has paid Thirteen Thousand Two Hundred Twenty-Five Dollars (\$13,225) of the administrative penalty and Thirteen Thousand Two Hundred Twenty-Five Dollars (\$13,225) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

### 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 Twenty-Six Thousand Four Hundred Fifty Dollars (\$26,450) as set forth in Section II, Paragraph 6 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: Reynolds & Kay, Ltd., Docket No. 2009-0161-WQ-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 implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Thirteen Thousand Two Hundred Twenty-Five Dollars (\$13,225) of the assessed administrative penalty shall be offset with the condition

that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. The Respondent shall undertake the following technical requirements:

- a. Immediately after the effective date of this Agreed Order, cease all unauthorized discharges of sediment from the Site.
- b. Within 30 days after the effective date of this Agreed Order:
  - i. Evaluate the effectiveness of the existing sediment and erosion controls to ensure that they can sufficiently retain sediment on-site to the extent practicable with consideration for local topography, soil type, and rainfall. Based on this evaluation, the Respondent shall begin maintaining in effective operating condition all sediment control measures, including repairing or replacing all silt fences and installing additional sediment controls to prevent sediment from escaping the Site; and
  - ii. Remove the sediment from the sedimentation basin and silt fence to restore them to their full capacity and properly dispose of the sediment at a TCEQ authorized location.
- c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 3.a and 3.b, as described in Ordering Provision No. 3.e below.
- d. Within 120 days after the effective date of this Agreed Order, remove visible accumulations of sediment from Shackleford Creek and submit a written statement that the sediment material was removed and relocated or disposed of at a TCEQ authorized location, including a description of the specific location where the sediment was taken, the amount of material transported, and method of sediment removal, as described in Ordering Provision No. 3.e below.
- e. Within 135 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 3.d. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, 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 fines 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  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

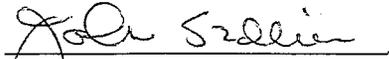
4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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.
7. 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.

8. 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.
9. 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.
10. 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.
11. 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

  
\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date 8/6/2009

I, the undersigned, have read and understand the attached Agreed Order in the matter of Reynolds & Kay, Ltd. I am authorized to agree to the attached Agreed Order on behalf of Reynolds & Kay, Ltd., 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, Reynolds & Kay, Ltd. 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.

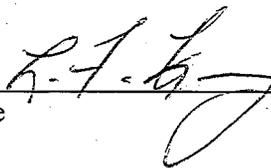
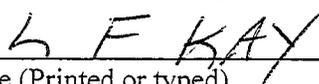
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Printed or typed)

\_\_\_\_\_  
Title

Authorized Representative of  
Reynolds & Kay, Ltd.

  
  
**PRESIDENT of L.F. KAY MANAGEMENT, LLC,  
GENERAL PARTNER**

**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.



Attachment A  
Docket Number: 2009-0161-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	Reynolds & Kay, Ltd.
Payable Penalty Amount:	Twenty-Six Thousand Four Hundred Fifty Dollars (\$26,450)
SEP Amount:	Thirteen Thousand Two Hundred Twenty-Five Dollars (\$13,225)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or Wastewater Treatment Assistance
Location of SEP:	Smith County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the Third-Party Recipient shall repair or replace failing water systems or on-site wastewater systems for low income homeowners. The Third-Party Recipient shall use SEP funds to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems. The Third-Party recipient shall use a consistent and documented system for determining eligible participants.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive, Suite 510  
Bryan, Texas 77802-2700

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to Texas Commission on Environmental Quality and mailed to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

