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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1104-SLG-E TCEQ ID: RN104967732 CASE NO.: 36157
RESPONDENT NAME: CITY OF KENEDY

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input checked="" 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

SITE WHERE VIOLATION(S) OCCURRED: one-half mile east of the intersection of Highway 72 and Farm-to-Market Road 792, adjacent to the City's wastewater treatment plant in Karnes County, Texas

TYPE OF OPERATION: sludge land application site

SMALL BUSINESS: Yes No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on November 23, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Tammy L. Mitchell, Litigation Division, MC 175, (512) 239-0736
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Enforcement Division, MC 169, (512) 239-1482

TCEQ Regional Contact: Mr. Tom Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050

Respondent: Honorable Randy Garza, 303 West Main Street, Kenedy, Texas 78119

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 23, 2008</p> <p>Date of NOE Relating to this Case: June 16, 2008</p> <p>Background Facts: The EDP RP was filed on November 12, 2008. Respondent filed an answer and the case was referred to SOAH. The signed Agreed Order was received on October 7, 2009.</p> <p>Current Compliance Status: No outstanding technical requirements.</p> <p>SLG:</p> <ol style="list-style-type: none"> Failed to timely submit an annual sludge report by September 1, 2007, for the reporting period from August 1, 2006 to July 31, 2007 [30 TEX. ADMIN. CODE § 312.48 and Permit No. 04525, Section XI, Reporting Requirements]. Failed to maintain authorization for the disposal of sewage sludge in a land application unit [30 TEX. ADMIN. CODE § 312.4(a) and TEX. WATER CODE § 26.121(c)]. 	<p>Total Assessed: \$4,075</p> <p>Total Deferred: \$4,075</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$0</p> <p>The administrative penalty shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project (SEP). 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.</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>Corrective Actions Taken: The Executive Director recognizes that the Respondent ceased land application of sludge as of April 2008.</p> <p>Ordering Provisions: The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Submit an administratively complete permit application for beneficial land use of sewage before recommencing land application operations; and Respond completely and adequately to all requests for information concerning the permit application within 30 days after the date of such request or by any other deadline specified in writing.

Attachment A
Docket Number: 2008-1104-SLG-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Kenedy
Penalty Amount:	Four thousand one hundred dollars (\$4,075.00)
SEP Offset Amount:	Four thousand one hundred dollars (\$4,075.00)
Type of SEP:	Pre-approved SEP
Third-Party Recipient:	Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D") <i>Cleanup of Abandoned Tire Sites</i>
Location of SEP:	Karnes

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset 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 Offset 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 the SEP Offset Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be to the **Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")** for the *Cleanup of Abandoned Tire Sites* project. Specifically, SEP monies will pay for the labor and disposal costs associated with proper clean up and disposal of abandoned tires. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project. Eligible clean up sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. The project will be administered in accordance with federal, state, and local environmental laws and regulations.

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

The abandoned tire clean up project will provide a discernable environmental benefit by providing for the proper disposal of tires, debris and waste, reducing the potential health threats associated with illegally dumped tires, helping rid the community of hazardous contaminants that may enter the soil and water, and helping to prevent the release of harmful chemicals into the air should illegally dumped tires catch fire.

C. Minimum Expenditure

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

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation
and Development Areas, Inc. (RC&D)
Attention: Amber Gibson
1716 Briarcrest Drive Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

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

Litigation Division
Attention: SEP Coordinator, MC 175
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 Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

TCEQ

DATES	Assigned	23-Jun-2008	Screening	7-Jul-2008	EPA Due	
	PCW	9-Oct-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Kenedy
Reg. Ent. Ref. No.	RN104967732
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36157	No. of Violations	2
Docket No.	2008-1104-SLG-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Andrea Linson-Mgbeodur
		EC's Team	Enforcement Team 2
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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No enhancement due to average performer classification.

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	\$25
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$7
Approx. Cost of Compliance	\$200

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,075
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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	\$4,075
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,075
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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: Deferral not offered for non-expedited settlements.

PAYABLE PENALTY	\$4,075
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Screening Date 7-Jul-2008

Docket No. 2008-1104-SLG-E

PCW

Respondent City of Kenedy

Policy Revision 2 (September 2002)

Case ID No. 36157

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN104967732

Media [Statute] Water Quality

Enf. Coordinator Andrea Linson-Mgbeoduru

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)	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%

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) 0%

>> 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

No enhancement due to average performer classification.

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

Screening Date 7-Jul-2008

Docket No. 2008-1104-SLG-E

PCW

Respondent City of Kenedy

Policy Revision 2 (September 2002)

Case ID No. 36157

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN104967732

Media [Statute] Water Quality

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 312.48 and Permit No. 04525, Section XI, Reporting Requirements

Violation Description Failed to timely submit an annual sludge report by September 1, 2007, for the reporting period from August 1, 2006 to July 31, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1 134 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction Before NOV NOV to EDRP/Settlement Offer

\$25

Extraordinary	
Ordinary	X
N/A	(mark with x)

Notes The Respondent submitted their annual sludge report on January 14, 2008.

Violation Subtotal \$75

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$75

This violation Final Assessed Penalty (adjusted for limits) \$75

Economic Benefit Worksheet

Respondent: City of Kenedy
Case ID No.: 36157
Reg. Ent. Reference No.: RN104967732
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	1-Sep-2007	14-Jan-2008	0.37	\$0	\$2	\$3
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount necessary to prepare and submit to the Commission the annual sludge report. The date required is the date the report was due. The final date is the date the report was submitted.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$3

Screening Date 7-Jul-2008

Docket No. 2008-1104-SLG-E

PCW

Respondent City of Kenedy

Policy Revision 2 (September 2002)

Case ID No. 36157

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN104967732

Media [Statute] Water Quality

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 312.4(a) and Tex. Water Code § 26.121(c)

Violation Description Failed to maintain authorization for the disposal of sewage sludge in a land application unit. Specifically, the City did not renew Permit No. 04525 and is continuing to land apply sludge.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4 110 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$4,000

Four monthly events are recommended, calculated from the permit expiration date, March 18, 2008, to the screening date, July 7, 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 \$4,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$4,000

This violation Final Assessed Penalty (adjusted for limits) \$4,000

Economic Benefit Worksheet

Respondent: City of Kenedy
Case ID No.: 36157
Reg. Ent. Reference No.: RN104967732
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				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$100	19-Mar-2008	28-Feb-2009	0.95	\$5	n/a	\$5
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount necessary to renew the permit. The date required is the date the due date for the renewal. The final date is the estimated compliance date.

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

\$5

Compliance History

Customer/Respondent/Owner-Operator:	CN600528459 City of Kenedy	Classification: AVERAGE	Rating: 1.65
Regulated Entity:	RN104967732 CITY OF KENEDY SLUDGE SITE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	SLUDGE PERMIT	WQ0004525000	
Location:	One-half mile east of the intersection of Highway 72 and Farm-to-Market Road 792, adjacent to the City of Kenedy Wastewater Treatment Plant in Karnes County, Texas		Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	June 24, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	June 23, 2003 to June 23, 2008		

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

Name: Andrea Linson-Mgbeoduru Phone: 512-239-1482

Site Compliance History Components

- | | |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 06/16/2008 (653827)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - 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
THE CITY OF KENEDY;
RN104967732**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-1104-SLG-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Kenedy ("the City") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a sludge land application site located one-half mile east of the intersection of Highway 72 and Farm-to-Market Road 792, adjacent to the City's wastewater treatment plant in Karnes County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about June 21, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of four thousand seventy-five dollars (\$4,075.00) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). Pursuant to TEX. WATER CODE § 7.067, four thousand seventy-five dollars (\$4,075.00) of the administrative penalty shall be conditionally offset by the City's completion of a Supplemental Environmental Project (SEP) as defined in Attachment A, incorporated herein by reference. The City'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.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City has ceased its land application of sludge operations as of April 2008.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

During an investigation conducted on April 23, 2008, a TCEQ San Antonio Regional Office investigator documented that the City violated:

- a. 30 TEX. ADMIN. CODE § 312.48 and Permit No. 04525, Section XI, Reporting Requirements by failing to timely submit an annual sludge report by September 1, 2007, for the reporting period from August 1, 2006 to July 31, 2007. Specifically, the sludge report due on September 1, 2007 was submitted on January 14, 2008.
- b. 30 TEX. ADMIN CODE § 312.4(a) and TEX. WATER CODE § 26.121(c) by failing to maintain authorization for the disposal of sewage sludge in a land application unit.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. The City is assessed an administrative penalty in the amount of four thousand seventy-five dollars (\$4,075.00) as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: The City of Kenedy, Docket No. 2008-1104-SLG-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 implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067 and as set forth in Section I, Paragraph 6, above. Four thousand seventy-five dollars (\$4,075.00) of the assessed administrative penalty shall be offset with the condition that the City implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. The City'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 City shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, the City shall submit an administratively complete permit application for beneficial land use of sewage before recommencing land application operations, in accordance with 30 TEX. ADMIN. CODE ch. 312 to:

Application Review and Processing Team
Customer Information and Application Processing Section, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087, Austin, Texas 78711-3088

- b. The City shall respond completely and adequately as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such request or by any other deadline specified in writing.
4. 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 Site operations referenced in this Agreed Order.
5. 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.
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 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.
7. 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.
8. 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.
9. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to the City, or three days after the date on which the Commission mails notice of this Agreed Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

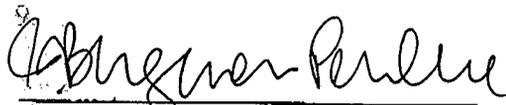
The City of Kenedy
TCEQ Docket No. 2008-1104-SLG-E
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

10/07/2009

For the Commission



12/14/09

For the Executive Director

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on the City's compliance history;
- Greater scrutiny of any permit applications submitted by the City;
- 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 against the City;
- Automatic referral to the Attorney General's Office of any future enforcement actions against the City; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution



Signature

10-7-09

Date

The Honorable Randy Garza

Name (Printed or typed)
Authorized representative of The City of Kenedy

Mayor

Title

For:

By:

Date:

By:

Date:

In the presence of:

Attachment A
Supplemental Environmental Project

Attachment A
Docket Number: 2008-1104-SLG-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Kenedy

Penalty Amount: Four thousand seventy-five dollars (\$4,075.00)

SEP Offset Amount: Four thousand seventy-five dollars (\$4,075.00)

Type of SEP: Pre-approved SEP

Third-Party Recipient: **Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D")** *Cleanup of Abandoned Tire Sites*

Location of SEP: Karnes

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset 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 Offset 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 the SEP Offset Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be to the **Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")** for the *Cleanup of Abandoned Tire Sites* project. Specifically, SEP monies will pay for the labor and disposal costs associated with proper clean up and disposal of abandoned tires. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project. Eligible clean up sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. The project will be administered in accordance with federal, state, and local environmental laws and regulations.

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

The abandoned tire clean up project will provide a discernable environmental benefit by providing for the proper disposal of tires, debris and waste, reducing the potential health threats associated with illegally dumped tires, helping rid the community of hazardous contaminants that may enter the soil and water, and helping to prevent the release of harmful chemicals into the air should illegally dumped tires catch fire.

C. Minimum Expenditure

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

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation
and Development Areas, Inc. (RC&D)
Attention: Amber Gibson
1716 Briarcrest Drive Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

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

Litigation Division
Attention: SEP Coordinator, MC 175
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 Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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