

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-0905-PWS-E **TCEQ ID:** RN101243921 **CASE NO.:** 39800  
**RESPONDENT NAME:** K C Utilities, Inc

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> <b>1660 AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS AGREED ORDER</b>	<input type="checkbox"/> <b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<input type="checkbox"/> <b>SHUTDOWN ORDER</b>	<input type="checkbox"/> <b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<input type="checkbox"/> <b>AMENDED ORDER</b>	<input type="checkbox"/> <b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA (check all that apply)</b>	<input type="checkbox"/> <b>INDUSTRIAL AND HAZARDOUS WASTE</b>
<input checked="" type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Pine Colony Mobile Home Park, County Road 144 and County Road 870, Brazoria County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on November 8, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Amanda Henry, Enforcement Division, Enforcement Team 2, MC R-12, (713) 767-3672; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Marshall Kus, President, K C Utilities, Inc, P.O. Box 2088, Alvin, Texas 77512  Ms. Jody Champion, Billing Clerk, K C Utilities, Inc, P.O. Box 2088, Alvin, Texas 77512  <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 type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 30, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 13, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>WATER</b></p> <p>1) Failed to ensure the Facility is enclosed by an intruder-resistant fence [30 TEX. ADMIN. CODE § 290.42(m)].</p> <p>2) Failed to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency and specifies the analytical procedures and laboratories that the Facility will use to comply with the monitoring requirements [30 TEX. ADMIN. CODE § 290.121(a) and (b)].</p> <p>3) Failed to provide a thorough and up-to-date plant operations manual for operator review and reference [30 TEX. ADMIN. CODE § 290.42(l)].</p>	<p><b>Total Assessed:</b> \$275</p> <p><b>Total Deferred:</b> \$55  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$220</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input 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>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of the Agreed Order, compile and begin maintaining an up-to-date chemical and microbiological monitoring plan.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p> <p>c. Within 60 days after the effective date of the Agreed Order:</p> <p>i. Repair the barbed wire around the Facility's fence to render it intruder-resistant; and</p> <p>ii. Develop and begin maintaining a thorough and up-to-date plant operations manual for operator review and reference.</p> <p>d. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision c.</p>

Additional ID No(s): 0200419



# Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	17-May-2010	Screening	2-Jun-2010	EPA Due	
	PCW	2-Jun-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	K C Utilities, Inc
Reg. Ent. Ref. No.	RN101243921
Facility/Site Region	12-Houston
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	39800	No. of Violations	3
Docket No.	2010-0905-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Amanda Henry
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement Subtotals 2, 3, & 7

Notes

**Culpability**   Enhancement Subtotal 4

Notes

**Good Faith Effort to Comply Total Adjustments** Subtotal 5

**Economic Benefit**  Enhancement\* Subtotal 6

Total EB Amounts	\$138
Approx. Cost of Compliance	\$1,100

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

**PAYABLE PENALTY**

Screening Date 2-Jun-2010

Docket No. 2010-0905-PWS-E

PCW

Respondent K C Utilities, Inc

Policy Revision 2 (September 2002)

Case ID No. 39800

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101243921

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

### 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)	2	10%
	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) 10%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement is due to two Notices of Violation ("NOVs") with same or similar violations as those in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 2-Jun-2010

Docket No. 2010-0905-PWS-E

PCW

Respondent K C Utilities, Inc

Policy Revision 2 (September 2002)

Case ID No. 39800

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101243921

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.42(m)

Violation Description

Failed to ensure the Facility is enclosed by an intruder-resistant fence. Specifically, at the time of the record review, it was documented that the barbed wire around the fence at the northeast corner of the Facility was sagging and not appropriately attached to the supporting arms.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 5%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

Matrix Notes

Failing to ensure the Facility fencing is intruder-resistant could expose customers of the Facility to insignificant amounts of pollutants which would not exceed levels that are protective of human health.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1

64 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$65

Violation Final Penalty Total \$55

This violation Final Assessed Penalty (adjusted for limits) \$55

# Economic Benefit Worksheet

**Respondent** K C Utilities, Inc  
**Case ID No.** 39800  
**Reg. Ent. Reference No.** RN101243921  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

Equipment	\$500	27-May-2009	31-Mar-2011	1.84	\$3	\$61	\$65
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount necessary to render the fence intruder-resistant. The date required is the date of the previous investigation documenting the violation. The final date is the estimated 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

\$500

TOTAL

\$65

Screening Date 2-Jun-2010

Docket No. 2010-0905-PWS-E

PCW

Respondent K C Utilities, Inc

Policy Revision 2 (September 2002)

Case ID No. 39800

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101243921

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.121(a) and (b)

Violation Description

Failed to maintain an up-to date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency and specifies the analytical procedures and laboratories that the Facility will use to comply with the monitoring requirements.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1

64 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$100

One single event is recommended.

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 \$100

Economic Benefit (EB) for this violation

Estimated EB Amount \$9

Statutory Limit Test

Violation Final Penalty Total \$110

This violation Final Assessed Penalty (adjusted for limits) \$110

## Economic Benefit Worksheet

**Respondent** K C Utilities, Inc  
**Case ID No.** 39800  
**Reg. Ent. Reference No.** RN101243921  
**Media** Public Water Supply  
**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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

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	\$100	27-May-2009	28-Feb-2011	1.76	\$9	n/a	\$9
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 costs includes the estimated amount to develop and maintain a chemical and microbiological monitoring plan. The date required is the date of the previous investigation documenting the violation. The final date is the estimated date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$9

Screening Date 2-Jun-2010

Docket No. 2010-0905-PWS-E

PCW

Respondent K C Utilities, Inc

Policy Revision 2 (September 2002)

Case ID No. 39800

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN101243921

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 290.42(l)

Violation Description

Failed to provide a thorough and up-to-date plant operations manual for operator review and reference.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1

64 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NCV 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 \$100

Economic Benefit (EB) for this violation

Estimated EB Amount \$65

Statutory Limit Test

Violation Final Penalty Total \$100

This violation Final Assessed Penalty (adjusted for limits) \$100

## Economic Benefit Worksheet

**Respondent** K C Utilities, Inc  
**Case ID No.** 39800  
**Reg. Ent. Reference No.** RN101243921  
**Media** Public Water Supply  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$500	27-May-2009	31-Mar-2011	1.84	\$3	\$61	\$65
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 required to compile a plant operations manual. The date required is the date of the previous investigation documenting the violation. The final date is the estimated 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

\$500

TOTAL

\$65

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601492705 K C Utilities, Inc Classification: Rating:  
Regulated Entity: RN101243921 PINE COLONY MOBILE HOME PARK Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0200419  
Location: CR144 & CR870, BRAZORIA COUNTY, TEXAS

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: June 02, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 02, 2005 to June 02, 2010

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

Name: Amanda Henry Phone: 713-767-3672

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

## 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 | 07/07/2009 | (746887) |
| 2 | 02/04/2010 | (787458) |
| 3 | 05/13/2010 | (797677) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 07/08/2009 (746887) CN601492705  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)  
Description: Failure to repair the barbed wire strands on the NE corner of the plant fence.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.121  
Description: Failure to develop and maintain an up-to-date system monitoring plan.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)  
Description: Failure to compile and maintain current a thorough plant operations manual for operator review and reference.

Date: 02/05/2010 (787458) CN601492705

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)  
Description: Failure to repair the barbed wire strands on the NE corner of the plant fence.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.121

Description: Failure to develop and maintain an up-to-date system monitoring plan.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)  
Description: Failure to compile and maintain current a thorough plant operations manual for operator review and reference.

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  
K C UTILITIES, INC  
RN101243921**

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§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2010-0905-PWS-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding K C Utilities, Inc ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at County Road 144 and County Road 870, Brazoria County, Texas (the "Facility") that has 150 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 18, 2010.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Two Hundred Seventy-Five Dollars (\$275) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Twenty Dollars (\$220) of the administrative penalty and Fifty-Five Dollars (\$55) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon

full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

6. 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.
7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to ensure the Facility is enclosed by an intruder-resistant fence, in violation of 30 TEX. ADMIN. CODE § 290.42(m), as documented during a record review conducted on March 30, 2010.
2. Failed to maintain an up-to date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency and specifies the analytical procedures and laboratories that the Facility will use to comply with the monitoring requirements, in violation of 30 TEX. ADMIN. CODE § 290.121(a) and (b), as documented during a record review conducted on March 30, 2010.
3. Failed to provide a thorough and up-to-date plant operations manual for operator review and reference, in violation of 30 TEX. ADMIN. CODE § 290.42(1), as documented during a record review conducted on March 30, 2010.

## III. DENIALS

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

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: K C Utilities, Inc, Docket No. 2010-0905-PWS-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of the Agreed Order, compile and begin maintaining an up-to-date chemical and microbiological monitoring plan, in accordance with 30 TEX. ADMIN. CODE § 290.121.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification, as detailed in Ordering Provision No. 2.d below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.
  - c. Within 60 days after the effective date of the Agreed Order:
    - i. Repair the barbed wire around the Facility's fence to render it intruder-resistant, in accordance with 30 TEX. ADMIN. CODE § 290.42; and
    - ii. Develop and begin maintaining a thorough and up-to-date plant operations manual for operator review and reference, in accordance with 30 TEX. ADMIN. CODE § 290.42.
  - d. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of 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  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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.
6. 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.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Srdan  
For the Executive Director

Date 10/29/2010

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

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

- A negative impact on compliance history;
  - Greater scrutiny of any permit applications submitted;
  - Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
  - Increased penalties in any future enforcement actions;
  - Automatic referral to the Attorney General's Office of any future enforcement actions; and
  - TCEQ seeking other relief as authorized by law.
- In addition, any falsification of any compliance documents may result in criminal prosecution.

Marshall I Kus  
Signature

Date 9/17/10

Marshall I Kus  
Name (Printed or typed)  
Authorized Representative of  
K C Utilities, Inc

Owner  
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

