

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2007-1997-PST-E RN101781615 CASE NO. 35103**  
**RESPONDENT NAME: KEA INVESTMENTS, INC.**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<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 checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION OCCURRED:** 4632 State Highway 198, Malakoff, Henderson County

**TYPE OF OPERATION:** Property that previously contained an inactive underground storage tank system

**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 May 24, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney:** Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Ms. Elvia Maske, Waste Enforcement Section, MC 149, (512) 239-0789  
**TCEQ Regional Contact:** Mr. Mike Brashear, Tyler Regional Office, MC R-5, (903) 535-5176  
**Respondent:** Mr. Seng Kea, President, Kea Investments, Inc., 2138 East Crosby Road, Carrollton, Texas 75006;  
Mr. Seng Kea, President, Kea Investments, Inc., P.O. Box 619, Malakoff, Texas 75148  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> November 5, 2007</p> <p><b>Date of NOE Relating to this Case:</b> November 19, 2007</p> <p><b>Background Facts:</b> The case was referred to the Litigation Division on May 6, 2008. The EDRP was filed on June 20, 2008. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on March 13, 2010.</p> <p><b>Current Compliance Status:</b> The Respondent has not yet submitted documentation certifying compliance. The USTs were removed from the ground on or about June 28, 2008.</p> <p><b>PST:</b> Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)].</p>	<p><b>Initial Calculated Penalty:</b> \$3,125</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$125/\$3,000</p> <p>The Respondent paid \$125 of the administrative penalty. The remaining amount of \$3,000 shall be payable in 35 monthly payments of \$100 each.</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>Corrective Actions Taken:</b></p> <p>The ED recognizes that the USTs have been removed from the ground.</p> <p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 90 days, submit an Assessment Report Form (TCEQ-0562) in accordance with Guidance for Risk-Based Assessments at LPST Sites in Texas.</li> <li>2. Respond completely and adequately, as determined by TCEQ, to all letter requests for information within 30 days after the date of such letters, or by any other deadline specified in writing.</li> <li>3. Within 120 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	21-Nov-2007	<b>Screening</b>	21-Nov-2007	<b>EPA Due</b>	
	<b>PCW</b>	4-Mar-2010				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Kea Investments, Inc.		
<b>Reg. Ent. Ref. No.</b>	RN101781615		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	35103	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2007-1997-PST-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Elvia Maske	
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 7	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$2,500**

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

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

**Compliance History** **25.0%** Enhancement **Subtotals 2, 3, & 7** **\$625**

Notes: Enhancement for one NOV with same or similar violations and one 1660 Order.

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

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **0.0%** Reduction **Subtotal 5** **\$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.

**0.0%** Enhancement\* **Subtotal 6** **\$0**  
 \*Capped at the Total EB \$ Amount

Total EB Amounts	\$4,643
Approx. Cost of Compliance	\$9,750

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$3,125**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** **\$3,125**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$3,125**

**DEFERRAL** **0.0%** Reduction Adjustment **\$0**

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 settlement.

**PAYABLE PENALTY** **\$3,125**

**Screening Date** 21-Nov-2007

**Docket No.** 2007-1997-PST-E

**PCW**

**Respondent** Kea Investments, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 35103

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101781615

**Media [Statute]** Petroleum Storage Tank

**Enf. Coordinator** Elvia Maske

### 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 ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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 ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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)** 25%

>> **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**

Enhancement for one NOV with same or similar violations and one 1660 Order.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

Screening Date 21-Nov-2007

Docket No. 2007-1997-PST-E

PCW

Respondent Kea Investments, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35103

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101781615

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.47(a)(2) and 334.54(b)

Violation Description Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Also, the Respondent failed to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 16

Table with frequency options: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the November 5, 2007 investigation date to the November 21, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4,643

Violation Final Penalty Total \$3,125

This violation Final Assessed Penalty (adjusted for limits) \$3,125

## Economic Benefit Worksheet

**Respondent** Kea Investments, Inc.  
**Case ID No.** 35103  
**Reg. Ent. Reference No.** RN101781615  
**Media** Petroleum Storage Tank  
**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)				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)	\$9,750	22-Dec-1998	28-Jun-2008	9.52	\$4,643	n/a	\$4,643

Notes for DELAYED costs

Estimated cost to permanently remove from service three USTs with a combined capacity of 13,000 gallons (one 8,000 gallons and one 5,000 gallons capacity tanks) at \$0.75 per gallon. The Date Required is the date when the Respondent was required to upgrade the UST system and the 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

\$9,750

**TOTAL**

\$4,643

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603094442 Kea Investments, Inc. Classification: AVERAGE Rating: 9.50  
Regulated Entity: RN101781615 Discount Tobacco Beer & Wine Classification: AVERAGE Site Rating: 18.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION INACTIVE 13363  
Location: 4632 STATE HIGHWAY 198, MALAKOFF, TX, 75148  
TCEQ Region: REGION 05 - TYLER  
Date Compliance History Prepared: November 17, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: November 17, 2004 to November 17, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Elvia Maske Phone: (512) 239 - 0789

## 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/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? Kea Investments, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ?  
OWN KTC Investment, Inc.  
OPR CHONG, PHILIP
5. When did the change(s) in owner or operator occur? 08/30/2005
6. Rating Date: 9/1/2009 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.  
**Effective Date: 11/24/2005 ADMINORDER 2004-2083-PST-E**  
Classification: Moderate  
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)  
30 TAC Chapter 37, SubChapter I 37.815(b)  
Description: A mechanism was received, but an address error was noted.
- 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 07/10/2007 (566772)  
2 11/16/2007 (600179)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
**Date: 07/11/2007 (566772)**  
Self Report? No Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.7(a)(1)  
Description: Failure to register all of the USTs at the site and to amend the site's PST Registration Information to reflect the current property owner's contact information and effective date of ownership  
Self Report? No Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)  
Description: Failure to secure the fill pipes to prevent unauthorized access on the two Underground Storage Tank (UST) systems located at the former Caney facility.  
Self Report? No Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
Description: Failure to perform the permanent removal from service of the three underground storage tanks (USTs) not meeting the technical upgrade requirements in accordance with 30 TAC Ch. 334.55.
- 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  
KEA INVESTMENTS, INC.;  
RN101781615**

§  
§  
§  
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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-1997-PST-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 Kea Investments, Inc., (“Kea”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Kea appear before the Commission and together stipulate that:

1. Kea owns property which had three inactive underground storage tanks (“USTs”) at 4632 State Highway 198, Malakoff, Henderson County, Texas (the “Facility”).
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 and TCEQ rules.
3. The Commission and Kea agree that the Commission has jurisdiction to enter this Agreed Order, and that Kea is subject to the Commission's jurisdiction.
4. Kea received notice of the violations alleged in Section II (“Allegations”) on or about November 24, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Kea of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
6. An administrative penalty in the amount of three thousand one hundred twenty-five dollars (\$3,125.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Kea paid one hundred twenty-five dollars (\$125.00) of the administrative penalty. The remaining amount of three thousand dollars (\$3,000.00) of the administrative

penalty shall be payable in 30 monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Kea fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Kea's failure to meet the payment schedule of this Agreed Order constitutes the failure by Kea to timely and satisfactorily comply with all of the terms of this Agreed Order.

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 recognizes that Kea removed the three inactive USTs at the Facility.
9. The Executive Director of the TCEQ and Kea agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
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 Kea 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 November 5, 2007, a TCEQ Tyler Regional Office investigator documented that Kea violated 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b) by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements. Also, Kea failed to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.

### III. DENIALS

Kea generally denies each allegation in Section II (“Allegations”).

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Kea pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Kea’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: Kea Investments, Inc., Docket No. 2007-1997-PST-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. Kea shall undertake the following technical requirements:
  - a. Within 90 days after the effective date of this Agreed Order, Kea shall submit an Assessment Report Form (TCEQ-0562) in accordance with Guidance for Risk-Based Assessments at LPST Sites in Texas. The Assessment Report Form (TCEQ-0562) shall be submitted for review and approval to:

Environmental Cleanup Section  
Remediation Division, MC 137  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Kea shall respond completely and adequately, as determined by the TCEQ, to all letter requests for information within 30 days after the date of such letters, or by any other deadline specified in writing.
    - c. Within 120 days after the effective date of this Agreed Order, Kea shall submit written certification and detailed supporting documentation, including photographs,

receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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 I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Kea shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Mike Brashear, Waste Section Manager  
Texas Commission on Environmental Quality  
Tyler Regional Office  
2916 Teague Drive  
Tyler, Texas 75701

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

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Kea shall be made in writing to the Executive Director. Extensions are not effective until Kea receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Kea 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.
7. 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.
8. 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 the Agreed Order to Kea, or three days after the date on which the Commission mails notice of this Agreed Order to Kea, 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

Burgess Pennington

For the Executive Director

5/3/2010

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, if any, 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, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

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

In addition, any falsification of any compliance documents may result in criminal prosecution.

Senghieng Kea  
Signature

3-13-10  
Date

SENGHIENG KEA  
Name (Printed or typed)  
Authorized representative of  
Kea Investments, Inc.

president  
Title