

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0529-PWS-E RN101761039 CASE NO. 37444
RESPONDENT NAME: KAS INVESTMENTS, LTD.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input 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 VIOLATIONS OCCURRED: 6422 Stephen F. Austin Road, Jones Creek, Brazoria County

TYPE OF OPERATION: public water 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 March 1, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-3400
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

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

TCEQ Regional Contact: Mr. Steve Smith, Water Section Manager, Houston Regional Office, R-12, (713) 767-3581

Respondent: Mr. Kabir Gulamani, Managing Agent, KAS Investments, Ltd., 6422 Stephen F Austin Rd., Jones Creek, Texas 77541-8308

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>___ Complaint ___ Routine ___ Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: November 1, 2008 and March 6, 2009</p> <p>Date of NOE Relating to this Case: March 6, 2009</p> <p>Background Facts: The EDPRP was filed on August 14, 2009. The EDFARP was filed on October 26, 2009, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDFARP on October 28, 2009. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>PWS: Failed to collect routine distribution coliform samples for the months of May 2007 through October 2007, March 2008 through May 2008, September 2008 and October 2008, and failed to provide public notification of the failure to collect routine samples in May 2007 through October 2007, March 2008, April 2008, September 2008 and October 2008 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d)].</p>	<p>Total Assessed: \$4,848</p> <p>Total Deferred: \$0 ___ Expedited Order ___ Financial Inability to Pay ___ SEP Conditional Offset</p> <p>Total Due to General Revenue: \$4,848</p> <p>This is a Default Order. Respondent has not paid any of the assessed administrative penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: ___ Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 10 days: <ol style="list-style-type: none"> a. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the water supply; and b. Begin collecting monthly routine distribution coliform samples which are representative of the Facility. 2. Within 180 days, comply with all applicable coliform monitoring requirements and provide water that meets the provisions regarding microbial contaminants for the Facility. 3. Within 195 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	23-Mar-2009	Screening	13-Apr-2009	EPA Due	1-May-2008
	PCW	14-Jul-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	KAS Investments, Ltd.
Reg. Ent. Ref. No.	RN101761039
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37444	No. of Violations	1
Docket No.	2009-0529-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Andrea Linson-Mgbeodur
		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	\$2,750
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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	55.0% Enhancement	Subtotals 2, 3, & 7	\$1,512
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Notes: Enhancement is due to eleven NOV's with the same or similar violations as those in the current enforcement action.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$586
 Approx. Cost of Compliance \$525
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,262
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OTHER FACTORS AS JUSTICE MAY REQUIRE	13.7%	Adjustment	\$586
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for recovery of avoided costs of compliance.

Final Penalty Amount \$4,848

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,848
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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 settlement.

PAYABLE PENALTY	\$4,848
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Screening Date 13-Apr-2009

Docket No. 2009-0529-PWS-E

PCW

Respondent KAS Investments, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 37444

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101761039

Media [Statute] Public Water Supply

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 (<i>number of NOVs meeting criteria</i>)	11	55%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<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) 55%

>> **Repeat Violator (Subtotal 3)**

No

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 eleven NOVs with the same or similar violations as those in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 55%

Screening Date 13-Apr-2009 **Docket No.** 2009-0529-PWS-E **PCW**
Respondent KAS Investments, Ltd. *Policy Revision 2 (September 2002)*
Case ID No. 37444 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101761039
Media [Statute] Public Water Supply
Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and Tex. Health & Safety Code § 341.033(d)

Violation Description
 Failed to collect routine distribution coliform samples for the months of May 2007 through October 2007, March 2008 through May 2008, September 2008 and October 2008 and failed to provide public notification of the failure to collect routine samples in May 2007 through October 2007, March 2008, April 2008, September 2008 and October 2008.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes
 Failure to collect routine monitoring samples may allow undetected contaminants that exceed levels protective of human health to be distributed to the public resulting in illness.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Eleven monthly events are recommended.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent KAS Investments, Ltd.
Case ID No. 37444
Reg. Ent. Reference No. RN101761039
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
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$525	31-May-2007	31-Oct-2008	2.34	\$61	\$525	\$586
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs includes the estimated costs to collect and submit monthly water samples for analysis (\$25/mo x 11 months = \$275) and provide public notification (\$25/mo x 10 months = \$250). The date required is the first month the Respondent failed to sample. The final date is the last month the Respondent failed to sample.

Approx. Cost of Compliance

\$525

TOTAL

\$586

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602591166	KAS Investments, Ltd.	Classification: HIGH	Rating: 0.00
Regulated Entity:	RN101761039	CONVENIENCE PLUS	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	50247	
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	0200366	
Location:	6422 STEPHEN F AUSTIN RD, JONES CREEK, BRAZORIA COUNTY, TEXAS			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	April 13, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 13, 2004 to April 13, 2009			

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? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |
| 6. Rating Date: 9/1/2008 Repeat Violator: NO | |

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- | | | |
|----|------------|----------|
| 1 | 03/02/2009 | (736629) |
| 2 | 03/03/2009 | (737183) |
| 3 | 03/03/2009 | (737185) |
| 4 | 03/03/2009 | (737190) |
| 5 | 03/03/2009 | (737193) |
| 6 | 03/03/2009 | (737200) |
| 7 | 03/03/2009 | (737205) |
| 8 | 03/03/2009 | (737209) |
| 9 | 03/03/2009 | (737213) |
| 10 | 03/03/2009 | (737218) |
| 11 | 03/03/2009 | (737222) |
| 12 | 03/06/2009 | (737545) |

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

Date: 06/25/2007 (736629)

CN602591166

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

Description: TCR Routine Monitoring Violation 05/2007 - Failure to collect any routine

monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 05/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/30/2007 (737183) CN602591166

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 06/2007 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 06/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 09/10/2007 (737185) CN602591166

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 07/2007 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 07/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 11/01/2007 (737190) CN602591166

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 08/2007 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 08/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 12/20/2007 (737193) CN602591166

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 09/2007 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 09/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 01/31/2008 (737200) CN602591166

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 10/2007 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 10/2007 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 04/29/2008 (737205) CN602591166

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 03/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 03/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 05/22/2008 (737209) CN602591166

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 04/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 04/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).
 Date: 06/27/2008 (737213) CN602591166
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 05/2008 - Failure to collect any routine monitoring sample(s).
 Date: 11/19/2008 (737218) CN602591166
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 09/2008 - Failure to collect any routine monitoring sample(s).
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 09/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).
 Date: 12/09/2008 (737222) CN602591166
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 10/2008 - Failure to collect any routine monitoring sample(s).
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 10/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

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
KAS INVESTMENTS, LTD.;
RN101761039**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-0529-PWS-E**

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is KAS Investments, Ltd. ("KAS").

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

FINDINGS OF FACT

1. KAS owns and operates a public water system at 6422 Stephen F. Austin Road in Jones Creek, Brazoria County, Texas (the "Facility").
2. The Facility provides water for human consumption, has one service connection, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
3. During record reviews conducted on November 1, 2008, and March 6, 2009, TCEQ Central Office staff documented that KAS failed to collect routine distribution coliform samples for the months of May 2007 through October 2007, March 2008 through May 2008, September 2008 and October 2008, and failed to provide public notification of the failure to collect routine samples in May 2007 through October 2007, March 2008, April 2008, September 2008 and October 2008.
4. KAS received notice of the violations on or about March 19, 2009.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of KAS Investments, Ltd." (the "EDPRP") in the TCEQ Chief Clerk's office on August 14, 2009.

6. By letter dated August 14, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served KAS with notice of the EDPRP. According to the return receipt "green card," KAS received notice of the EDPRP on August 17, 2009, as evidenced by the signature on the card.
7. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of KAS Investments, Ltd." (the "EDFARP") in the TCEQ Chief Clerk's office on October 26, 2009.
8. By letter dated October 26, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served KAS with notice of the EDFARP. According to the return receipt "green card," KAS received notice of the EDFARP on October 28, 2009, as evidenced by the signature on the card.
9. More than 20 days have elapsed since KAS received notice of the EDPRP and EDFARP, provided by the Executive Director. KAS failed to file an answer to the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, KAS is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, KAS failed to collect routine distribution coliform samples for the months of May 2007 through October 2007, March 2008 through May 2008, September 2008 and October 2008, and did not provide public notification of the failure to collect routine samples in May 2007 through October 2007, March 2008, April 2008, September 2008 and October 2008, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served KAS with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director timely served KAS with proper notice of the EDFARP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 9, KAS failed to file a timely answer to the EDPRP or EDFARP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN.

CODE § 70.106, the Commission may enter a Default Order against KAS and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against KAS for violations of the Texas Health and Safety Code, within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of four thousand eight hundred forty-eight dollars (\$4,848.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. KAS is assessed an administrative penalty in the amount of four thousand eight hundred forty-eight dollars (\$4,848.00) for violations of the Texas Health & Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and KAS' compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: KAS Investments, Ltd.; Docket No. 2009-0529-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. KAS shall undertake the following technical requirements:
 - a. Within ten days after the effective date of this Order, KAS shall:

- i. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the water supply, in accordance with 30 TEX. ADMIN CODE § 290.122; and
 - ii. Begin collecting monthly routine distribution coliform samples which are representative of the Facility, as required by 30 TEX. ADMIN CODE § 290.109.
- b. Within 180 days after the effective date of the this Order, KAS shall comply with all applicable coliform monitoring requirements and provide water that meets the provisions regarding microbial contaminants for the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.109.
- c. Within 195 days after the effective date of this Order, KAS 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.”

KAS 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

with a copy to:

Steve Smith, Water Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk St., Ste. H
Houston, Texas 77023-1452

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon KAS. KAS is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by KAS shall be made in writing to the Executive Director. Extensions are not effective until KAS receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to KAS if the Executive Director determines that KAS has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

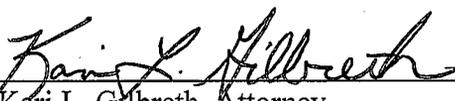
“My name is Kari L. Gilbreth. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of KAS Investments, Ltd.” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 14, 2009.

The EDPRP was mailed to KAS at its last known address on August 14, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” KAS received notice of the EDPRP on August 17, 2009, as evidenced by the signature on the card.

The EDFARP was mailed to KAS at its last known address on October 26, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” KAS received notice of the EDFARP on October 28, 2009, as evidenced by the signature on the card.

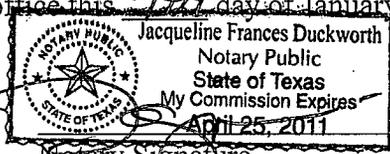
More than 20 days have elapsed since KAS received notice of the EDPRP and EDFARP. KAS failed to file an answer to the EDPRP or EDFARP, failed to request a hearing, and failed to schedule a settlement conference.”



Kari L. Gilbreth, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 4th day of January, A.D., 2010.



Notary Signature