

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-0978-AIR-E **TCEQ ID:** RN100683291 **CASE NO.:** 39861  
**RESPONDENT NAME:** Kaneka Texas Corporation fka Kaneka High-Tech Materials, 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 checked="" 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 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> Kaneka Texas Apical Division, 6161 Underwood Road, Pasadena, Harris County</p> <p><b>TYPE OF OPERATION:</b> Chemical manufacturing plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" 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 April 4, 2011. 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. Nadia Hameed, Enforcement Division, Enforcement Team 5, MC R-12, (713) 767-3629; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Thomas Garrisi, Environmental Health and Safety Manager, Kaneka Texas Corporation, 6161 Underwood Road, Pasadena, Texas 77507  Mr. Steven Skarke, Senior Vice President, Kaneka Texas Corporation, 6161 Underwood Road, Pasadena, Texas 77507  <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> April 22, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 4, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a records review follow-up to an investigation conducted on October 21, 2009.</p> <p><b>AIR</b></p> <p>1) Failed to include the required information in the standard permit registration renewal. Specifically, the Respondent did not provide the information determined by the Air Permits Division to be necessary to demonstrate compliance with the requirements and conditions of Standard Permit Registration No. 38180 in a timely manner [30 TEX. ADMIN. CODE §§ 116.604(2) and 116.617 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>2) Failed to submit the semi-annual deviation reports for the periods of February 13, 2007 to August 13, 2007, August 14, 2007 to February 12, 2008, February 13, 2008 to August 13, 2008 and August 14, 2008 to February 12, 2009 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B), Federal Operating Permit ("FOP") No. O-2800, General Terms and Conditions and Special Terms and Conditions Nos. 8 and 12, and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>3) Failed to submit the annual permit compliance certifications for the certification periods of February 13, 2007 to February 12, 2008 and February 13, 2008 to February 12, 2009 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(1), FOP No. O-2800, General Terms and Conditions and Special Terms and Conditions Nos. 8 and 12, and TEX.</p>	<p><b>Total Assessed:</b> \$42,275</p> <p><b>Total Deferred:</b> \$8,455  <input 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> \$33,820</p> <p><b>Compliance History Classification:</b>            Person/CN – Average            Site/RN – Average</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:</p> <p>a. On March 24, 2010, provided the records which were requested during the October 21, 2009 investigation;</p> <p>b. On April 13, 2010, implemented procedures to ensure that all deviation reports and permit compliance certifications are submitted correctly and in a timely manner;</p> <p>c. On April 23, 2010, submitted a standard permit registration renewal application to obtain authorization for the thermal oxidizer;</p> <p>d. On July 2, 2010, submitted the corrected versions of the deviation reports and permit compliance certification; and</p> <p>e. On October 14, 2010 obtained the renewal for Standard Permit Registration No. 38180 for the thermal oxidizer.</p>

<p>HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>4) Failed to provide records necessary for the TCEQ to conduct an investigation. Specifically, records requested to determine compliance with emissions events, emissions inventory for 2008, loading and unloading of volatile organic compounds, emission credits, limitations, standards, equipment specifications, monitoring, recordkeeping, reporting and testing of emission units, during an October 21, 2009 investigation with a due date of November 3, 2009, were not provided until March 24, 2010 [30 TEX. ADMIN. CODE §§ 106.8(c)(2), 116.115(b)(2)(E)(iii), and 122.143(4), FOP Permit No. O-2800, General Terms and Conditions and Special Terms and Conditions Nos. 2F, 2G, 3A, 2E, 3B, 4A, 9B(iv) and 12, and TEX. HEALTH &amp; SAFETY CODE §§ 382.016(b) and 382.085(b)].</p>		
---	--	--

Additional ID No(s): HG3299J



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>TCEQ</b> <b>DATES</b>	Assigned	7-Jun-2010			
	PCW	2-Nov-2010	Screening	10-Jun-2010	EPA Due 28-Feb-2011

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc.
Reg. Ent. Ref. No.	RN100683291
Facility/Site Region	12-Houston
Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	39861	No. of Violations	4
Docket No.	2010-0978-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Nadia Hameed
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## 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	\$3,637	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$28,100	

**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 10-Jun-2010

Docket No. 2010-0978-AIR-E

PCW

Respondent Kaneka Texas Corporation fka Kaneka High-Tech Materi

Policy Revision 2 (September 2002)

Case ID No. 39861

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100683291

Media [Statute] Air

Enf. Coordinator Nadia Hameed

### 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)	2	40%
	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)	2	-2%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 48%

>> 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

Penalty enhancement due to two 1660 agreed orders and two same or similar NOVs. Penalty reduction for two Notices of Audit.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 48%

Screening Date 10-Jun-2010

Docket No. 2010-0978-AIR-E

PCW

Respondent Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39861

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100683291

Media [Statute] Air

Enf. Coordinator Nadia Hameed

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 116.604(2) and 116.617, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to include the required information in the standard permit registration renewal. Specifically, the Respondent did not provide the information determined by the Air Permits Division to be necessary to demonstrate compliance with the requirements and conditions of Standard Permit Registration No. 38180 in a timely manner.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 5 Number of violation days 757

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

Violation Base Penalty \$12,500

Five semi-annual events are recommended from May 14, 2008 the date the permit renewal was due to the screening date of June 10, 2010.

Good Faith Efforts to Comply

0.0% Reduction \$0

	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 \$12,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$605

Violation Final Penalty Total \$18,500

This violation Final Assessed Penalty (adjusted for limits) \$18,500

## Economic Benefit Worksheet

**Respondent** Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc.

**Case ID No.** 39861

**Req. Ent. Reference No.** RN100683291

**Media** Air

**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	\$5,000	14-May-2008	14-Oct-2010	2.42	\$605	n/a	\$605
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for obtaining a standard permit registration renewal. The date required is based on the date the standard permit renewal was due. The final date is the date the standard permit registration was renewed.

### 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

\$5,000

**TOTAL**

\$605

Screening Date 10-Jun-2010

Docket No. 2010-0978-AIR-E

PCW

Respondent Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39861

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100683291

Media [Statute] Air

Enf. Coordinator Nadia Hameed

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(B), Federal Operating Permit No. O-2800, General Terms and Conditions and Special Terms and Conditions Nos. 8 and 12, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit the semi-annual deviation reports for the periods of February 13, 2007 to August 13, 2007, August 14, 2007 to February 12, 2008, February 13, 2008 to August 13, 2008, and August 14, 2008 to February 12, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 4 1235 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$10,000

Four single events are recommended for the four semi-annual deviation reports.

Good Faith Efforts to Comply

10.0% Reduction

\$1,000

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes The Respondent completed the corrective actions on July 2, 2010, after the June 4, 2010 NOE, but prior to the settlement offer.

Violation Subtotal \$9,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,022

Violation Final Penalty Total \$13,800

This violation Final Assessed Penalty (adjusted for limits) \$13,800

## Economic Benefit Worksheet

**Respondent** Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc.  
**Case ID No.** 39861  
**Reg. Ent. Reference No.** RN100683291  
**Media** Air  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$22,000	13-Aug-2007	13-Apr-2010	2.67	\$2,935	n/a	\$2,935
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$600	13-Aug-2007	2-Jul-2010	2.89	\$87	n/a	\$87

#### Notes for DELAYED costs

Estimated cost for submitting the reports (completed 07/02/2010) and changing procedures to ensure that all deviation and permit compliance certification reports are submitted in a timely manner (completed 04/13/2010). The date required is based on the date the first report was due. The final dates are the dates the corrective actions were completed.

### 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

\$22,600

**TOTAL**

\$3,022

Screening Date 10-Jun-2010

Docket No. 2010-0978-AIR-E

PCW

Respondent Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39861

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100683291

Media [Statute] Air

Enf. Coordinator Nadia Hameed

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.146(1), Federal Operating Permit No. O-2800, General Terms and Conditions and Special Terms and Conditions Nos. 8 and 12, and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to submit the annual permit compliance certifications for the certification periods of February 13, 2007 to February 12, 2008 and February 13, 2008 through February 12, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			25%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 Number of violation days 1235

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$5,000

Two single events are recommended, one for each missed report.

Good Faith Efforts to Comply

10.0% Reduction \$500

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes The Respondent completed the corrective action on July 2, 2010, after the June 4, 2010 NOE, but prior to the settlement offer.

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$6,900

This violation Final Assessed Penalty (adjusted for limits) \$6,900

## Economic Benefit Worksheet

**Respondent** Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc.  
**Case ID No.** 39861  
**Req. Ent. Reference No.** RN100683291  
**Media** Air  
**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
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

See Economic Benefit under Violation No. 2

### 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

\$0

**TOTAL**

\$0

Screening Date 10-Jun-2010

Docket No. 2010-0978-AIR-E

PCW

Respondent Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39861

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100683291

Media [Statute] Air

Enf. Coordinator Nadia Hameed

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code §§ 106.8(c)(2), 116.115(b)(2)(E)(iii) and 122.143(4), FOP Permit No. O-2800, General Terms and Conditions and Special Terms and Conditions Nos. 2F, 2G, 3A, 2E, 3B, 4A, 9B(iv) and 12, and Tex. Health & Safety Code §§ 382.016(b) and 382.085(b)

Violation Description Failed to provide records necessary for the TCEQ to conduct an investigation. Specifically, records requested to determine compliance with emissions events, emissions inventory for 2008, loading and unloading of volatile organic compounds, emission credits, limitations, standards, equipment specifications, monitoring, recordkeeping, reporting and testing of emission units, during an October 21, 2009 investigation with a due date of November 3, 2009, were not provided until March 24, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (25%).

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 154

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

Violation Base Penalty \$2,500

One single event is recommended for the records not provided.

Good Faith Efforts to Comply

25.0% Reduction \$625

Table for Good Faith Efforts: Extraordinary, Ordinary (marked with x), N/A.

Notes The Respondent completed the corrective actions on March 24, 2010, prior to the June 4, 2010 NOE.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$3,075

This violation Final Assessed Penalty (adjusted for limits) \$3,075

## Economic Benefit Worksheet

**Respondent** Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc.

**Case ID No.** 39861

**Req. Ent. Reference No.** RN100683291

**Media** Air

**Violation No.** 4

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)	\$500	21-Oct-2009	24-Mar-2010	0.42	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost for providing records. The date required is based on the date the records were requested. The final date is the date the corrective actions were completed.

### 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**

\$11

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601537285 Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc. Classification: AVERAGE Rating: 9.20  
 Regulated Entity: RN100683291 KANEKA TEXAS APICAL DIVISION Classification: AVERAGE Site Rating: 9.20

ID Number(s):	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HG3299J
	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	HG3299J
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXD987991684
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	39484
	AIR NEW SOURCE PERMITS	REGISTRATION	92436
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	HG3299J
	AIR NEW SOURCE PERMITS	REGISTRATION	39471
	AIR NEW SOURCE PERMITS	REGISTRATION	40193
	AIR NEW SOURCE PERMITS	REGISTRATION	44587
	AIR NEW SOURCE PERMITS	AFS NUM	4820101370
	AIR NEW SOURCE PERMITS	REGISTRATION	73778
	STORMWATER	PERMIT	TXR05U162
	AIR OPERATING PERMITS	PERMIT	2800
	AIR OPERATING PERMITS	ACCOUNT NUMBER	HG3299J

Location: 6161 UNDERWOOD RD, PASADENA, TX, 77507

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: June 10, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 10, 2005 to June 10, 2010

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

Name: NHameed Phone: 713-767-3629

### 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. Rating Date: 9/1/2009 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.

Effective Date: 07/20/2009

ADMINORDER 2008-1465-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)

30 TAC Chapter 122, SubChapter B 122.145(2)(C)

30 TAC Chapter 122, SubChapter B 122.146(2)

5C THSC Chapter 382 382.085(b)

Rqmt Prov: O-02800 OP

Description: As a result of Office Annual Compliance Certification Investigation No. 686787 conducted August 20, 2008, the Texas Commission on Environmental Quality (TCEQ) Houston Regional Office determined that Kaneka Texas Corporation failed to submit an annual compliance certification for the period of February 13, 2006 through February 12, 2007.

Effective Date: 12/18/2009

ADMINORDER 2009-0935-AIR-E

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.10(e)  
5C THSC Chapter 382 382.085(b)

Description: Have failed to submit an EIQ for the year 2008, as documented during the record review conducted April 23, 2009 to May 14, 2009. Specifically, the EIQ for the 2008 calendar year emissions data was due by March 31, 2009, but the Respondent failed to submit that EIQ.

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	07/31/2008	(686060)
2	08/28/2008	(686787)
3	06/03/2009	(746711)
4	02/18/2010	(776417)
5	02/23/2010	(767642)
6	06/03/2010	(800072)

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

Date: 07/31/2008 (686060)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 101, SubChapter A 101.10(e)  
5C THSC Chapter 382 382.085(b)

Description: Failure to submit a 2007 Emissions Inventory; category B19(g)(3).

Date: 02/11/2010 (776417)

CN601537285

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)  
30 TAC Chapter 122, SubChapter B 122.145(2)(C)  
30 TAC Chapter 122, SubChapter B 122.146(2)  
5C THSC Chapter 382 382.085(b)  
O-02800 OP

Description: As a result of Office Annual Compliance Certification Investigation No. 686787 conducted August 20, 2008, the Texas Commission on Environmental Quality (TCEQ) Houston Regional Office determined that Kaneka Texas Corporation failed to submit an annual compliance certification for the period of February 13, 2006 through February 12, 2007.

F. Environmental audits.

Notice of Intent Date: 06/22/2006 (484943)

No DOV Associated

Notice of Intent Date: 07/19/2007 (570682)

No DOV Associated

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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	
<b>KANEKA TEXAS CORPORATION</b>	<b>§</b>	
<b>FKA KANEKA HIGH-TECH</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>MATERIALS, INC.</b>	<b>§</b>	
<b>RN100683291</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**AGREED ORDER**  
**DOCKET NO. 2010-0978-AIR-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 Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. 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 chemical manufacturing plant at 6161 Underwood Road in Pasadena, Harris County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. 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.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 9, 2010.
5. 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.

6. An administrative penalty in the amount of Forty-Two Thousand Two Hundred Seventy-Five Dollars (\$42,275) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Thirty-Three Thousand Eight Hundred Twenty Dollars (\$33,820) of the administrative penalty and Eight Thousand Four Hundred Fifty-Five Dollars (\$8,455) 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.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
  - a. On March 24, 2010, provided the records which were requested during the October 21, 2009 investigation;
  - b. On April 13, 2010, implemented procedures to ensure that all deviation reports and permit compliance certifications are submitted correctly and in a timely manner;
  - c. On April 23, 2010, submitted a standard permit registration renewal application to obtain authorization for the thermal oxidizer;
  - d. On July 2, 2010, submitted the corrected versions of the deviation reports and permit compliance certification; and
  - e. On October 14, 2010 obtained the renewal for Standard Permit Registration No. 38180 for the thermal oxidizer.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent 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

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

1. Failed to include the required information in the standard permit registration renewal, in violation of 30 TEX. ADMIN. CODE §§ 116.604(2) and 116.617, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on April 22, 2010. Specifically, the Respondent did not provide the information determined by the Air Permits Division to be necessary to demonstrate compliance with the requirements and conditions of Standard Permit Registration No. 38180 in a timely manner.
2. Failed to submit the semi-annual deviation reports and for the periods of February 13, 2007 to August 13, 2007, August 14, 2007 to February 12, 2008, February 13, 2008 to August 13, 2008 and August 14, 2008 to February 12, 2009, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(B), Federal Operating Permit No. O-2800, General Terms and Conditions and Special Terms and Conditions Nos. 8 and 12, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on April 22, 2010.
3. Failed to submit the annual permit compliance certifications for the certification periods of February 13, 2007 to February 12, 2008 and February 13, 2008 to February 12, 2009, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(1), Federal Operating Permit No. O-2800, General Terms and Conditions and Special Terms and Conditions Nos. 8 and 12, and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on April 22, 2010.
4. Failed to provide records necessary for the TCEQ to conduct an investigation, in violation of 30 TEX. ADMIN. CODE §§ 106.8(c)(2), 116.115(b)(2)(E)(iii) and 122.143(4), FOP Permit No. O-2800, General Terms and Conditions and Special Terms and Conditions Nos. 2F, 2G, 3A, 2E, 3B, 4A, 9B(iv) and 12, and TEX. HEALTH & SAFETY CODE §§ 382.016(b) and 382.085(b), as documented during a record review conducted on April 22, 2010. Specifically, records requested to determine compliance with emissions events, emissions inventory for 2008, loading and unloading of volatile organic compounds, emission credits, limitations, standards, equipment specifications, monitoring, recordkeeping, reporting and testing of emission units, during an October 21, 2009 investigation with a due date of November 3, 2009, were not provided until March 24, 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 6 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: Kaneka Texas Corporation fka Kaneka High-Tech Materials, Inc., Docket No. 2010-0978-AIR-E" to:

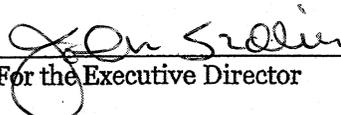
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The 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 Plant operations referenced in this Agreed Order.
3. 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.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. 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

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

\_\_\_\_\_  
Date 4/4/2011

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.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 03/29/2011

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Kaneka Texas Corporation fka  
Kaneka High-Tech Materials, Inc.

\_\_\_\_\_  
Title SR Vice President

**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.