

**Executive Summary – Enforcement Matter – Case No. 40994**

**City of Kennard**

**RN102078169**

**Docket No. 2011-0079-MWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

WQ

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

City of Kennard, located on the southeast side of Kennard on a 27 acre tract, on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357 in Houston County, Texas

**Type of Operation:**

Wastewater treatment system

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** April 22, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$6,450

**Amount Deferred for Expedited Settlement:** \$1,290

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$5,160

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 40994**  
**City of Kennard**  
**RN102078169**  
**Docket No. 2011-0079-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** December 27, 2010  
**Date(s) of NOE(s):** January 6, 2011

***Violation Information***

Failed to comply with permitted effluent limits for biochemical oxygen demand [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011474001, Effluent Limitations and Monitoring Requirements No. 1].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

Within 90 days, submit written certification demonstrating compliance.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** The Honorable Jesse Stephens, Mayor, City of Kennard, P.O. Box 115, Kennard, Texas 75847  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	10-Jan-2011	<b>Screening</b>	10-Jan-2011	<b>EPA Due</b>	
	<b>PCW</b>	18-Jan-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Kennard		
<b>Reg. Ent. Ref. No.</b>	RN102078169		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	40994	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0079-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jordan Jones
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$3,000**

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

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

**Compliance History** **115.0%** Enhancement **Subtotals 2, 3, & 7** **\$3,450**

Notes: Enhancement for 15 months of self-reported effluent violations and two agreed orders with denial language.

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

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts \$915  
Approx. Cost of Compliance \$10,000  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$6,450**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$6,450**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$6,450**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$1,290**

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

Notes:

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$5,160**

Screening Date 10-Jan-2011

Docket No. 2011-0079-MWD-E

PCW

Respondent City of Kennard

Policy Revision 2 (September 2002)

Case ID No. 40994

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102078169

Media [Statute] Water Quality

Enf. Coordinator Jordan Jones

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	15	75%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <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)** 115%

#### >> 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 15 months of self-reported effluent violations and two agreed orders with denial language.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 115%

Screening Date 10-Jan-2011

Docket No. 2011-0079-MWD-E

PCW

Respondent City of Kennard

Policy Revision 2 (September 2002)

Case ID No. 40994

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102078169

Media [Statute] Water Quality

Enf. Coordinator Jordan Jones

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011474001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limits, as documented in a record review conducted on December 27, 2010. See attached Effluent Limit Violation Table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			X	10%
	Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 Number of violation days 153

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

Violation Base Penalty \$3,000

Three quarterly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$915

Violation Final Penalty Total \$6,450

This violation Final Assessed Penalty (adjusted for limits) \$6,450

# Economic Benefit Worksheet

**Respondent** City of Kennard  
**Case ID No.** 40994  
**Reg. Ent. Reference No.** RN102078169  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				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)	\$10,000	31-Jan-2010	30-Nov-2011	1.83	\$915	n/a	\$915

Notes for DELAYED costs

Estimated cost to determine the cause of noncompliance and to make any necessary repairs/adjustments to the Facility. Date required is the initial date of noncompliance. Final date is the expected 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	\$10,000	<b>TOTAL</b>	\$915
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**Effluent Limit Violation Table**

<b>Respondent</b>	City of Kennard
<b>ID Number(s)</b>	TPDES Permit No. WQ0011474001; Case No. 40994
<b>Docket Number</b>	2011-0079-MWD-E
<b>Enf. Coordinator</b>	Jordan Jones

**Corresponds to Violation Number:** 1

**EFFLUENT PARAMETER**

**Permit Limit**

Effluent Parameter	BOD <sub>5</sub> Daily Avg. Conc. Limit = 30 mg/L	BOD <sub>5</sub> Daily Avg. Loading Limit = 15 lbs/day
Month/Year		
January 2010	32.7	22.3
May 2010	34.2	
June 2010	30.9	
August 2010	31.8	
September 2010	33	
	BOD <sub>5</sub> = biochemical oxygen demand (5-Day)	lbs/day = pounds per day
	Conc. = concentration	mg/L = milligrams per liter
	Avg. = average	



# Compliance History

Customer/Respondent/Owner-Operator: CN600685036 City of Kennard Classification: AVERAGE Rating: 4.67

Regulated Entity: RN102078169 CITY OF KENNARD Classification: AVERAGE Site Rating: 4.67

ID Number(s): WASTEWATER PERMIT WQ0011474001  
WASTEWATER EPA ID TX0056596

Location: LOCATED ON THE SOUTHEAST SIDE OF KENNARD ON A 27 ACRE TRACT, ON ELM CREEK BETWEEN PINE PRAIRIE ROAD AND FARM-TO-MARKET ROAD 357 IN HOUSTON COUNTY, TEXAS

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: January 18, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 10, 2006 to January 10, 2011

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

Name: Jordan Jones Phone: (512) 239-2569

## 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: 9/1/2010 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: 11/09/2007 ADMINORDER 2007-0510-MWD-E  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Rqmt Prov: Effluent Limits PERMIT  
Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.  
Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)  
Rqmt Prov: Self-reporting Requirements PERMIT  
Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review.
- Effective Date: 05/03/2009 ADMINORDER 2008-1710-MWD-E  
Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Rqmt Prov: WQ11474-001 EL&MR Pg 2, No 1 PERMIT  
Description: Failure by City of Kennard (WWTP) to discharge effluent compliant with permit limitations for Biochemical Oxygen Demand (BOD).  
Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Rqmt Prov: WQ11474-001 M&RR Pg 6, No 7c PERMIT  
Description: Failure by the City of Kennard to notify the TCEQ Region 10 Office and the Manager of the Enforcement Section III (MC 149) of the Enforcement Division, within the required notification period, for each effluent violation which deviated from the permitted effluent limitation by more than 40%.  
Classification: Minor  
Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)

Rqmt Prov: WQ11474-001 M&RR Pg 5, No 3(c)(ii) PERMIT

Description: Failure by the City of Kennard to maintain records of monitoring activities, which includes the identity of the individual who made the measurement.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(5)

Rqmt Prov: WQ11474-001 Permit Condition 2.d. PERMIT

Description: Failure by the City of Kennard to prevent unauthorized discharge of sludge into or adjacent to water in the state.

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	02/27/2006	(473588)
2	03/17/2006	(473589)
3	01/13/2006	(473593)
4	04/19/2006	(501673)
5	05/25/2006	(501674)
6	06/22/2006	(501675)
7	07/20/2006	(523938)
8	08/30/2006	(523939)
9	09/21/2006	(523940)
10	03/22/2007	(542553)
11	10/19/2006	(548953)
12	12/07/2006	(548954)
13	12/22/2006	(548955)
14	01/24/2007	(548956)
15	02/20/2007	(582311)
16	04/30/2007	(582312)
17	05/31/2007	(582313)
18	07/02/2007	(603555)
19	07/30/2007	(603556)
20	08/13/2007	(603557)
21	09/13/2007	(603558)
22	10/18/2007	(622110)
23	12/03/2007	(622111)
24	12/27/2007	(622112)
25	02/04/2008	(673924)
26	08/20/2008	(685500)
27	07/07/2008	(692181)
28	04/02/2008	(692182)
29	05/05/2008	(692183)
30	06/09/2008	(713269)
31	06/26/2008	(713270)
32	08/11/2008	(713271)
33	09/02/2008	(713272)
34	10/16/2008	(713273)
35	10/27/2008	(729383)
36	12/22/2008	(729384)
37	02/09/2009	(752588)
38	03/20/2009	(752589)
39	04/19/2009	(752590)
40	12/08/2008	(752591)
41	01/29/2009	(752592)
42	05/20/2009	(770206)
43	06/15/2009	(770207)
44	11/24/2009	(781750)
45	02/27/2010	(810279)
46	07/20/2009	(810280)
47	08/19/2009	(810281)
48	09/20/2009	(810282)

49 10/20/2009 (810283)  
 50 11/20/2009 (810284)  
 51 12/21/2009 (810285)  
 52 01/20/2010 (810286)  
 53 03/20/2010 (832841)  
 54 04/22/2010 (832842)  
 55 05/24/2010 (832843)  
 56 06/20/2010 (846888)  
 57 07/20/2010 (861386)  
 58 08/21/2010 (867613)  
 59 09/21/2010 (874604)  
 60 10/20/2010 (882169)  
 61 01/06/2011 (886051)  
 62 11/22/2010 (888649)

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

Date: 02/28/2006 (473589) CN600685036  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/31/2006 (501673) CN600685036  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 04/30/2006 (501674) CN600685036  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 05/31/2006 (501675) CN600685036  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/31/2007 (582312) CN600685036  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 07/31/2007 (603557) CN600685036  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date 09/30/2007 (622110) CN600685036  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date 04/30/2008 (713269) CN600685036  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date 05/31/2008 (713270) CN600685036  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date 05/31/2009 (770207) CN600685036  
 Self Report? YES Classification: Moderate

Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	01/31/2010	(810279)	CN600685036
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	05/31/2010	(846888)	CN600685036
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	06/30/2010	(861386)	CN600685036
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	08/31/2010	(874604)	CN600685036
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	09/30/2010	(882169)	CN600685036
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		

- 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
- K. Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF KENNARD  
RN102078169**

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

## **AGREED ORDER DOCKET NO. 2011-0079-MWD-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 City of Kennard ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. 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 wastewater treatment system located on the southeast side of Kennard on a 27 acre tract, on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357 in Houston County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
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 January 11, 2011.
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 Six Thousand Four Hundred Fifty Dollars (\$6,450) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Thousand One Hundred Sixty Dollars

(\$5,160) of the administrative penalty and One Thousand Two Hundred Ninety Dollars (\$1,290) 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 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.
10. 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.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011474001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on December 27, 2010 and shown in the table below.

Effluent Parameter	BOD5 Daily Avg. Conc.	BOD5 Daily Avg. Loading
<i>Month/Year</i>	Limit = 30 mg/L	Limit = 15 lbs/day
January 2010	32.7	22.3
May 2010	34.2	
June 2010	30.9	
August 2010	31.8	
September 2010	33	
	BOD5 = biochemical oxygen demand (5-Day)	lbs/day = pounds per day
	Conc. = concentration	mg/L = milligrams per liter
	Avg. = average	

### 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: City of Kennard, Docket No. 2011-0079-MWD-E" to:

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

2. It is further ordered that the Respondent shall, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0011474001 including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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.
7. 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.

8. 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 5/12/2011

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 2-14-11

  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Kennard

\_\_\_\_\_  
Title Mayor

**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.