

Executive Summary – Enforcement Matter – Case No. 41204

H & K JOLLY LLC

RN103012720

Docket No. 2011-0303-MWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Jolly Truck Stop, located at the northwest corner of Farm-to-Market Road 2393 and United States Highway 287, Clay County

Type of Operation:

Truck stop with an associated wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 6, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$3,000

Amount Deferred for Expedited Settlement: \$600

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$2,400

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 by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 41204
H & K JOLLY LLC
RN103012720
Docket No. 2011-0303-MWD-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: January 25, 2011
Date(s) of NOE(s): February 11, 2011

Violation Information

Failed to maintain authorization to discharge wastes. Specifically, the Respondent did not renew TCEQ Permit No. WQ0014417001, which expired on December 1, 2010, and is continuing to land apply wastewater from the Facility without authorization [30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2) and TEX. WATER CODE § 26.121(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

- a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 330 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TCEQ Permit No. WQ0014417001;
- b. Within 30 days, submit an administratively complete permit application;
- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;
- d. Within 45 days, submit written certification demonstrating compliance with Ordering Provision b.; and
- e. Within 330 days, submit written certification demonstrating compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

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

Executive Summary – Enforcement Matter – Case No. 41204

H & K JOLLY LLC

RN103012720

Docket No. 2011-0303-MWD-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Ms. Lanae Foard, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-2554; Ms. Laurie Eaves, Enforcement Division,
MC 219, (512) 239-4495

TCEQ SEP Coordinator: N/A

Respondent: Mr. Yadollah Kamali, General Manager/Owner, H & K JOLLY LLC,
3392 United States Highway 287 North Access Road, Wichita Falls, Texas 76305

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Feb-2011	Screening	24-Feb-2011	EPA Due	
	PCW	24-Feb-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	H & K JOLLY LLC
Reg. Ent. Ref. No.	RN103012720
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41204	No. of Violations	1
Docket No.	2011-0303-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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: \$514
 Approx. Cost of Compliance: \$10,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: [Empty box]

Final Penalty Amount	\$3,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,000
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DEFERRAL	20.0% Reduction	Adjustment	-\$600
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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	\$2,400
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Screening Date 24-Feb-2011

Docket No. 2011-0303-MWD-E

PCW

Respondent H & K JOLLY LLC

Policy Revision 2 (September 2002)

Case ID No. 41204

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103012720

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

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>)	0	0%
	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%

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) 0%

>> 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

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 24-Feb-2011

Docket No. 2011-0303-MWD-E

PCW

Respondent H & K JOLLY LLC

Policy Revision 2 (September 2002)

Case ID No. 41204

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103012720

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 305.65 and 305.125(2) and Tex. Water Code § 26.121(a)(1)

Violation Description Failed to maintain authorization for the land application of wastewater, as documented during an investigation conducted on January 25, 2011. Specifically, the Respondent did not renew TCEQ Permit No. WQ0014417001, which expired on December 1, 2010, and is continuing to land apply wastewater from the Facility without authorization.

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			10%

Matrix Notes 100% of rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 Number of violation days 85

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,000

Three monthly events are recommended from the permit expiration date (December 1, 2010) to the screening date (February 24, 2011).

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 \$514

Violation Final Penalty Total \$3,000

This violation Final Assessed Penalty (adjusted for limits) \$3,000

Economic Benefit Worksheet

Respondent H & K JOLLY LLC
Case ID No. 41204
Req. Ent. Reference No. RN103012720
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	1-Dec-2010	11-Dec-2011	1.03	\$514	n/a	\$514

Notes for DELAYED costs

Estimated cost to prepare and submit a new permit application to obtain authorization to land apply wastewater. Date required is the permit expiration date. 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

TOTAL

\$514

Compliance History

Customer/Respondent/Owner-Operator: CN603172776 H & K Jolly LLC
Regulated Entity: RN103012720 JOLLY TRUCK STOP

Classification: Rating: 3.01
AVERAGE
Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s):
Location: Northwest corner of Farm-to-Market Road 2393
and United States Highway 287, Clay County, Texas

TCEQ Region: REGION 03 - ABILENE

Date Compliance History Prepared: February 24, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 24, 2006 to February 24, 2011

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

Name: Lanae Foard Phone: (512) 239-2554

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.
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 02/11/2011 (895298)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- 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
H & K JOLLY LLC
RN103012720**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0303-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 H & K JOLLY LLC ("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 truck stop with an associated wastewater treatment facility located at the the northwest corner of Farm-to-Market Road 2393 and United States Highway 287 in Clay 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 February 16, 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 Three Thousand Dollars (\$3,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Four Hundred Dollars (\$2,400) of the

administrative penalty and Six Hundred Dollars (\$600) 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 maintain authorization to discharge wastes, in violation of 30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2) and TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on January 25, 2011. Specifically, the Respondent did not renew TCEQ Permit No. WQ0014417001, which expired on December 1, 2010, and is continuing to land apply wastewater from the Facility without authorization.

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: H & K JOLLY LLC, Docket No. 2011-0303-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 undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, until such time that authorization to operate is obtained, or until 330 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit limits and conditions of expired TCEQ Permit No. WQ0014417001;
- b. Within 30 days after the effective date of this Agreed Order, submit an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE ch. 305 to:

Application Review and Processing Team
Water Quality Division, MC 148
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;
- d. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.b, in accordance with Ordering Provision No. 2.f below;
- e. Within 330 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained, in accordance with Ordering Provision No. 2.f below;
- f. The certifications required by Ordering Provision Nos. 2.d and 2.e shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certifications 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
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

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

John Szellin
For the Executive Director

5/12/2011
Date

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.

Yadollah Kamali
Signature

03/29/11
Date

Yadollah Kamali
Name (Printed or typed)
Authorized Representative of
H & K JOLLY LLC

owner / G. manager
Title

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