

Executive Summary – Enforcement Matter – Case No. 39993
K C Utilities, Inc.
RN102186459
Docket No. 2010-1111-MWD-E

Order Type:
Agreed Order

Findings Order Justification:
N/A

Media:
PST

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
Approximately 3.2 miles north-northwest of the intersection of State Highway (“SH”) 6 and SH 35, adjacent to Brazoria County Road 144 to the west and to the east of the Atchison, Topeka and Santa Fe Railroad tracks, Brazoria County

Type of Operation:
wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: November 4, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$34,510

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$1,085

Total Due to General Revenue: \$33,425

Payment Plan: 35 payments of \$955 each

SEP Conditional Offset: N/A

Compliance History Classifications:
Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: April 29, 2010; May 7, 2010
Date(s) of NOV(s): May 1, 2007; April 24, 2008; November 9, 2009
Date(s) of NOE(s): July 6, 2010

Violation Information

1. Failed to submit the annual sludge report to the TCEQ Central Office for the reporting period ending July 31, 2008, by September 1, 2008 [30 TEX. ADMIN. CODE § 305.125(1) and (17); and TPDES Permit No. WQ0012935001, Sludge Provisions].
2. Failed to submit monthly discharge monitoring reports (“DMRs”) by the 20th day of the following month [30 TEX. ADMIN. CODE §§ 305.125(1) and 319.7(d); and TPDES Permit No. WQ0012935001, Monitoring and Reporting Requirements No. 1].
3. Failed to ensure that all of the Facility’s systems of collection, treatment, and disposal are properly operated and maintained [30 TEX. ADMIN. CODE § 305.125(5); and TPDES Permit No. WQ0012935001, Operational Requirements No. 1].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Within 15 days, submit the annual sludge report for the monitoring period ending July 31, 2008, and the DMRs for the months of February 2008 through April 2010.
2. Within 30 days:
 - a. Develop and implement procedures and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified monthly DMRs and annual sludge reports; and
 - b. Ensure that all of the Facility’s systems of collection, treatment, and disposal are properly operated and maintained to ensure compliance with the SV30 concentration in the aeration basin, proper MLSS concentration, and that there is no sludge in the chlorine contact chamber.
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: October 22, 2010
Date Answer(s) Filed: December 3, 2010
SOAH Referral Date: January 5, 2011
Hearing Date(s):
Preliminary hearing: March 3, 2011 (waived)
Evidentiary hearing: October 20, 2011 (scheduled)
Settlement Date: October 1, 2011

Executive Summary – Enforcement Matter – Case No. 39993
K C Utilities, Inc.
RN102186459
Docket No. 2010-1111-MWD-E

Contact Information

TCEQ Attorneys: Kari L. Gilbreth, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Jorge Ibarra, Air Enforcement Section, (817) 588-5890

TCEQ Regional Contact: Stephen Smith, Houston Regional Office, (713) 767-3581

Respondent: Marshall Kus, Director, K C Utilities, Inc., P.O. Box 2088, Alvin, Texas 77512

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Jul-2010	Screening	8-Jul-2010	EPA Due	
	PCW	12-Jul-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	K C Utilities, Inc.
Reg. Ent. Ref. No.	RN102186459
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39993	No. of Violations	3
Docket No.	2010-1111-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$29,000
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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	19.0% Enhancement	Subtotals 2, 3, & 7	\$5,510
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Notes: Enhancement for three NOV's with the same/similar type of violations and two months of self-reported effluent violations.

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: \$648
 Approx. Cost of Compliance: \$8,200
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$34,510
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$34,510
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$34,510
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral offered for non expedited settlement.

PAYABLE PENALTY	\$34,510
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Screening Date 8-Jul-2010

Docket No. 2010-1111-MWD-E

PCW

Respondent K C Utilities, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39993

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102186459

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	3	15%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 19%

>> **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 three NOVs with the same/similar type of violations and two months of self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 19%

Screening Date 8-Jul-2010 **Docket No.** 2010-1111-MWD-E **PCW**
Respondent K C Utilities, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 39993 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102186459
Media [Statute] Water Quality
Enf. Coordinator Jorge Ibarra, P.E.

Violation Number
Rule Cite(s) Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012935001, Sludge Provisions and 30 Tex. Admin. Code § 305.125(1) and (17)
Violation Description Failed to submit the annual sludge report for the reporting period ending July 31, 2008 by September 1, 2008 to the TCEQ Central Office.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="0%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="10%"/>
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	x

Violation Base Penalty

Good Faith Efforts to Comply Reduction

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

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent K C Utilities, Inc.
Case ID No. 39993
Reg. Ent. Reference No. RN102186459
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)	\$500	1-Sep-2008	1-Feb-2011	2.42	\$60	n/a	\$60

Notes for DELAYED costs

Estimated cost to submit the required sludge report and to develop and implement procedures and conduct employee training. Date Required is the date the sludge report was due. Final Date is the expected compliance date.

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

\$60

Screening Date 8-Jul-2010 **Docket No.** 2010-1111-MWD-E **PCW**
Respondent K C Utilities, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 39993 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102186459
Media [Statute] Water Quality
Enf. Coordinator Jorge Ibarra, P.E.

Violation Number
Rule Cite(s) TPDES Permit No. WQ0012935001, Monitoring and Reporting Requirements No. 1 and 30 Tex. Admin. Code §§ 305.125(1) and 319.7(d)
Violation Description Failed to submit monthly discharge monitoring reports ("DMRs") by the 20th day of the following month. Specifically, DMRs have not been submitted for the months of February 2008 through April 2010 to the TCEQ Central Office.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

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

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent K C Utilities, Inc.
Case ID No. 39993
Reg. Ent. Reference No. RN102186459
Media Water Quality
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				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)	\$2,700	20-Mar-2008	1-Feb-2011	2.87	\$388	n/a	\$388

Notes for DELAYED costs

Estimated cost to begin submitting the required DMRs (\$100 for each report). Date Required is the date the first missing DMR was due. Final Date is the expected compliance date.

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

\$2,700

TOTAL

\$388

Screening Date 8-Jul-2010 **Docket No.** 2010-1111-MWD-E **PCW**
Respondent K C Utilities, Inc. *Policy Revision 2 (September 2002)*
Case ID No. 39993 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102186459
Media [Statute] Water Quality
Enf. Coordinator Jorge Ibarra, P.E.

Violation Number

Rule Cite(s) TPDES Permit No. WQ0012935001, Operational Requirements No. 1 and 30 Tex. Admin. Code § 305.125(5)

Violation Description Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained. Specifically, the thirty minute settleable solids concentration in the aeration basin was 96%, the mixed liquor suspended solids concentration was 8,900 milligrams per liter, and the chlorine contact chamber contained up to 1.5 feet of black sludge in a 7 foot water depth.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

>> Programmatic Matrix

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

Matrix Notes Failure to ensure that all systems of the Facility are properly operated and maintained could result in the release of significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violaiton.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

One quarterly event is recommended from the investigation date of April 29, 2010 to the screening date of July 8, 2010.

Good Faith Efforts to Comply

Reduction

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

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent K C Utilities, Inc.
Case ID No. 39993
Reg. Ent. Reference No. RN102186459
Media Water Quality
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)	\$5,000	29-Apr-2010	15-Feb-2011	0.80	\$200	n/a	\$200

Notes for DELAYED costs

Estimated cost to ensure that all systems of the Facility are properly operated and maintained. Date Required is the investigation date. Final Date is the expected compliance date.

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

\$200

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601492705	K C Utilities, Inc.	Classification: AVERAGE	Rating: 0.89
Regulated Entity:	RN102186459	PINE COLONY UTILITIES FACILITY	Classification: AVERAGE	Site Rating: 0.89
ID Number(s):	WASTEWATER		PERMIT	WQ0012935001
	WASTEWATER		EPA ID	TX0095770
	WASTEWATER LICENSING		LICENSE	WQ0012935001

Location: Approx 3.2 miles N-NW of the intersection of SH6 & SH35, adjacent to Brazoria CR 144 to the west & to the east of Atchison, Topeka & Santa Fe Railroad tracks in Brazoria County Texas

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: July 08, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 08, 2005 to July 08, 2010

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

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 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	07/21/2005	(446085)		19	08/27/2007		(626899)
2	08/22/2005	(446086)		20	11/01/2007		(626900)
3	10/10/2005	(478271)		21	11/30/2007		(626901)
4	10/24/2005	(478272)		22	12/27/2007		(626902)
5	12/09/2005	(478273)		23	01/17/2008		(614459)
6	12/22/2005	(478274)		24	02/11/2008		(676025)
7	02/01/2006	(478275)		25	02/21/2008		(676024)
8	02/23/2006	(478269)		26	04/24/2008		(679858)
9	03/23/2006	(478270)		27	05/08/2008		(694398)
10	05/12/2006	(504524)		28	05/08/2008		(694399)
11	05/26/2006	(504525)		29	05/08/2008		(694400)
12	06/22/2006	(504526)		30	05/08/2008		(694401)
13	09/25/2006	(526846)		31	05/08/2008		(694402)
14	04/20/2007	(626895)		32	05/08/2008		(694403)
15	05/01/2007	(540818)		33	11/09/2009		(775976)
16	05/25/2007	(626896)		34	01/14/2010		(787492)
17	06/26/2007	(626897)		35	07/06/2010		(800332)
18	07/20/2007	(626898)					

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

Date:	08/31/2005	(478271)	CN601492705			
	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:	11/30/2006	(694403)	CN601492705			
	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:	05/01/2007	(540818)	CN601492705			
	Self Report?	NO	Classification:		Minor	
	Citation:	30 TAC Chapter 317 317.7(b)				
	Description:	Failure to maintain the walkways and hand rails.				
	Self Report?	NO	Classification:		Minor	
	Citation:	30 TAC Chapter 317 317.7(e)				

	Description:	Failure to provide an all weather access road.		
	Self Report?	NO	Classification:	Minor
	Citation:	30 TAC Chapter 319, SubChapter A 319.7(c)		
Date:	04/24/2008	Description:	Failure to properly complete the discharge monitoring reports (DMRs) for the month of November 2006.	
		(679858)	CN601492705	
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		30 TAC Chapter 305, SubChapter F 305.125(17)		
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		30 TAC Chapter 305, SubChapter F 305.125(17)		
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		30 TAC Chapter 305, SubChapter F 305.125(17)		
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		30 TAC Chapter 305, SubChapter F 305.125(17)		
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		30 TAC Chapter 305, SubChapter F 305.125(17)		
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		30 TAC Chapter 305, SubChapter F 305.125(17)		
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		30 TAC Chapter 305, SubChapter F 305.125(17)		
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		30 TAC Chapter 305, SubChapter F 305.125(17)		
Date:	11/09/2009	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	
		(775976)	CN601492705	
	Self Report?	NO	Classification:	Major
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		30 TAC Chapter 305, SubChapter F 305.125(17)		
	Description:	Sludge Provisions, pg. 12 - 22 PERMIT		
		Failure to submit the annual sludge report for 2007-2008. The annual sludge report, along with the supporting documentation, must be submitted by September 1 of each year.		
	Self Report?	NO	Classification:	Major
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		M&RR, pg.5, no. 3b PERMIT		
	Description:	Failure to make available sludge disposal records. There were no sludge disposal records available for review at the time of the investigation.		
	Self Report?	NO	Classification:	Major
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
		M&RR, pg. 5, no. 3b PERMIT		
	Description:	Failure to maintain effluent monitoring records and make them available for review. Effluent Discharge Monitoring Reports (DMRs) and laboratory reports were not available for review at the time of the inspection.		

Self Report?	NO	Classification:	Major
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) M&RR, pg. 4, no. 1 PERMIT		
Description:	Failure to submit Discharge Monitoring Reports (DMRs) from Febuary 2008 through August 2009. The Texas Commission on Environmental Quality in Austin has not received any DMRs since January 2008. DMRs must be submitted by the 20th day of the each month.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)		
Description:	Failure to maintain the blower. One of the two blowers on site was not operational at the time of the investigation. The blower did not have a belt installed.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.6(b)(1)(E)		
Description:	Failure to maintain the fan in the chlorine room. The fan was not operational at the time of the investigation.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 317 317.6(b)(1)(C)		
Description:	Failure to provide chlorine scales as required. Chlorine scales were not available to determine the amount of chlorine remaining in the gas cylinders.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)		
Description:	Failure to operate and maintain the aeration basin, clarifier, and chlorine contact chamber as required. A follow-up investigation was conducted on April 29, 2010 because documentation was never submitted to address this violation. The thirty minute settleable solids concentration in the aeration basin was 96%. The mixed liquor suspended solids concentration was 8,900 mg/L. The chlorine contact chamber contained up to 1.5 feet of black sludge in a 7 foot water depth.		

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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
K C UTILITIES, INC.;
RN102186459;**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-1111-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding K C Utilities, Inc. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates a wastewater treatment facility located approximately 3.2 miles north-northwest of the intersection of State Highway ("SH") 6 and SH 35, adjacent to Brazoria County Road 144 to the west and to the east of the Atchison, Topeka and Santa Fe Railroad tracks in Brazoria County, Texas (the "Facility"). According to the Brazoria County Appraisal District records, the Facility's property identification number is 167986 and its legal description is A0295 H T & B R R, TRACT 56A. The Facility holds Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012935001 ("the TPDES Permit"). The Facility adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of thirty-four thousand five hundred ten dollars (\$34,510.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one thousand eighty-five dollars (\$1,085.00) of the administrative penalty. The remaining amount of thirty-three thousand four hundred twenty-five dollars (\$33,425.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of nine hundred fifty-five dollars (\$955.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later

than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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

1. During a record review conducted on May 7, 2010, a TCEQ Central Office investigator documented that Respondent:
 - a. Failed to submit the annual sludge report to the TCEQ Central Office for the reporting period ending July 31, 2008, by September 1, 2008, in violation of the TPDES Permit Sludge Provisions and 30 TEX. ADMIN. CODE § 305.125(1) and (17); and
 - b. Failed to submit monthly discharge monitoring reports ("DMRs") to the TCEQ by the 20th day of the following month, in violation of the TPDES Permit Monitoring and Reporting Requirements No. 1 and 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.7(d). Specifically, DMRs were not submitted to the TCEQ for the months of February 2008 through April 2010.
2. During an investigation conducted on April 29, 2010, a Houston Regional Office investigator documented that Respondent failed to ensure that all of the Facility's systems of collection, treatment, and disposal are properly operated and maintained, in violation of the TPDES Permit Operational Requirements No. 1 and 30 TEX. ADMIN. CODE § 305.125(5). Specifically, the Thirty-Minute Settleable Solids Concentration ("SV30") in the aeration basin was at 96 percent, the Mixed Liquor Suspended Solids ("MLSS") concentration was at 8,900 milligrams per liter ("mg/L"), and the chlorine contact chamber contained up to 1.5 feet of black sludge in a 7-foot water depth.
3. Respondent received notice of the alleged violations on or about July 11, 2010.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: K C Utilities, Inc., Docket No. 2010-1111-MWD-E" to:

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

2. Respondent shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Agreed Order, Respondent shall submit the annual sludge report for the monitoring period ending July 31, 2008, and the DMRs for the months of February 2008 through April 2010 to:

Texas Commission on Environmental Quality
Compliance Monitoring Team
Enforcement Division, MC 224
P.O. Box 13087
Austin, Texas 78711-3087
 - b. Within 30 days after the effective date of this Agreed Order, Respondent shall:
 - i. Develop and implement procedures and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified monthly DMRs and annual sludge reports, in accordance with the TPDES Permit Monitoring and Reporting Requirements No. 1 and Sludge Provisions; and
 - ii. Ensure that all of the Facility's systems of collection, treatment, and disposal are properly operated and maintained to ensure compliance with the SV30 concentration in the aeration basin, proper MLSS concentration, and that there is no sludge in the chlorine contact chamber, in accordance with the TPDES Permit Operational Requirements No. 1.
 - c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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:

Steve Smith, Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against 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.
8. 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.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

12/5/2011

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of K C Utilities, Inc., 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

Marshall I Kus

Signature
Marshall Kus, President
K C Utilities, Inc.

10/1/11

Date

MARSHALL I. Kus

Name (Printed or typed)
Authorized representative of
K C Utilities, Inc.

President

Title