EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0128-PWS-E **TCEQ ID:** RN101197549 **CASE NO.:** 35258

RESPONDENT NAME: Kempner Water Supply Corporation

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
X PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Kempner WSC, located at 11896 Highway 190, Kempner, Lampasas County

TYPE OF OPERATION: Public water supply

SMALL BUSINESS: ____ Yes _X_ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on June 9, 2008. No comments were received.

CONTACTS AND MAILING LIST:

SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768
TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Robert R. Bikoski, President, Kempner Water Supply Corporation, P.O. Box 103, Kempner, Texas 76539
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint X Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** September 20, 2007 **Date of NOE Relating to this Case:** December 7, 2007 (NOE) **Background Facts:** This was a routine investigation. **WATER** 1) Failure to maintain an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies. Specifically, the map of the system that was made available on the date of the investigation had not been updated since 2001 [30 TEX. ADMIN. CODE § 290.46(n)(2)]. 2) Failure to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day. Specifically, it was noted at the time of the investigation that the water system was not monitoring the disinfectant residual on weekends [30 TEX. ADMIN. CODE § 290.110(c)(4)(B)]. 3) Failure to flush all dead-end mains at monthly intervals. Specifically, it was noted during the investigation that dead-end mains were not flushed during May 2007 [30 TEX. ADMIN. CODE § 290.46(l)]. 4) Failure to institute all necessary special precautions, including issuing a boil water notice to the customers of the water system within 24 hours following an event where the disinfectant residual drops below 0.20 milligrams per liter ("mg/L") free chlorine or 0.50 mg/L total chlorine. Specifically, on September 15, 2006, records show that the chlorine residual was below 0.20 mg/L free chlorine and 0.50 mg/L total chlorine,	**Total Assessed:** $1,523 **Total Deferred:** $304 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $1,219 **Total Paid (Due) to General Revenue:** $0 **Site Compliance History Classification** __ **High** __ **Average** __ **Poor** **Person Compliance History Classification** __ **High** __ **Average** __ **Poor** **Major Source:** X Yes ___ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility: a) On September 16, 2006, the disinfectant residual concentration was restored to a minimum of 0.20 mg/L free chlorine and 0.50 mg/L total chlorine throughout the distribution system; b) In June 2007, monthly flushing of dead-end mains was resumed; c) On September 22, 2007, began monitoring of the disinfectant residuals once per day; and d) On December 20, 2007: i. An up-to-date map of the distribution system was provided to the Commission; and ii. A written policy was implemented by the Respondent that details the special precautions that must be taken in the event of an outage, low pressure, or low disinfectant residuals. **Ordering Provisions:** 2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A).

but no boil water notice was issued within 24 hours after the low chlorine residual occurrence [30 TEX. ADMIN. CODE §§ 290.122(a)(2) and 290.46(q)]. 5) Failure to maintain the disinfectant residual concentration throughout the distribution system at a minimum of 0.20 mg/L free chlorine or 0.50 mg/L total chlorine at all times. Specifically, on September 15, 2006, water system records show that the Pecan Creek site had a free chlorine residual of 0.12 mg/L and a total chlorine residual of 0.34 mg/L and the Highway 190 site had a free chlorine residual of 0.17 mg/L and a total chlorine residual of 0.40 mg/L [30 TEX. ADMIN. CODE § 290.110(b)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].		

Additional ID No(s).: PWS ID No. 1410028

Attachment A
Docket Number: 2008-0128-PWS-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Kempner Water Supply Corporation**
Payable Penalty Amount:	**One Thousand Two Hundred Nineteen Dollars ($1,219)**
SEP Amount:	**One Thousand Two Hundred Nineteen Dollars ($1,219)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up**
Location of SEP:	**Lampasas County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision November 6, 2007*

TCEQ

DATES					
Assigned	10-Dec-2007				
PCW	28-Dec-2007	Screening	28-Dec-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Kempner Water Supply Corporation		
Reg. Ent. Ref. No.	RN101197549		
Facility/Site Region	9-Waco	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	35258	No. of Violations	5
Docket No.	2008-0128-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Rebecca Clausewitz
Multi-Media		EC's Team	Enforcement Team 2
Admin. Penalty $ Limit Minimum	$50	Maximum	$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$1,350**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 8% Enhancement — *Subtotals 2, 3, & 7* **$108**

Notes: The compliance history enhancement is due to four prior Notices of Violation containing violations that are dissimilar to the violations in the current enforcement action.

Culpability — No — 0% Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 10% Reduction — *Subtotal 5* **$135**

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

Notes: The Respondent achieved compliance with all violations as of December 20, 2007.

0% Enhancement* — *Subtotal 6* **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts	$211
Approx. Cost of Compliance	$750

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$1,323**

OTHER FACTORS AS JUSTICE MAY REQUIRE — 15% — *Adjustment* **$200**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: An enhancement is recommended to capture the avoided costs of compliance.

Final Penalty Amount **$1,523**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$1,523**

DEFERRAL — 20% Reduction — *Adjustment* **-$304**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$1,219**

Screening Date 28-Dec-2007 **Docket No.** 2008-0128-PWS-E **PCW**

Respondent Kempner Water Supply Corporation

Policy Revision 2 (September 2002)

Case ID No. 35258

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101197549

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

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

Adjustment Percentage (Subtotal 2) 8%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The compliance history enhancement is due to four prior Notices of Violation containing violations that are dissimilar to the violations in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 8%

Screening Date 28-Dec-2007 **Docket No.** 2008-0128-PWS-E **PCW**

Respondent Kempner Water Supply Corporation *Policy Revision 2 (September 2002)*

Case ID No. 35258 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101197549

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.46(n)(2)

Violation Description Failed to maintain an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies. Specifically, the map of the system that was made available on the date of the investigation had not been updated since 2001.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
		x	

Percent 10%

Matrix Notes: Approximately 50% of the rule requirement was not met, because on the date of the investigation, the water supply had a distribution map, but it had not been updated.

Adjustment $900

$100

Violation Events

Number of Violation Events 1 | 91 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $9

Statutory Limit Test

Violation Final Penalty Total $113

This violation Final Assessed Penalty (adjusted for limits) $113

Economic Benefit Worksheet

Respondent Kempner Water Supply Corporation
Case ID No. 35258
Reg. Ent. Reference No. RN101197549
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)	$500	20-Sep-2007	20-Dec-2007	0.2	$0	$8	$9
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	The delayed costs include the amount to prepare an updated map of the distribution system, calculated from the date of the investigation to the date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $500

TOTAL $9

Screening Date 28-Dec-2007 **Docket No.** 2008-0128-PWS-E **PCW**

Respondent Kempner Water Supply Corporation *Policy Revision 2 (September 2002)*

Case ID No. 35258 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101197549

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.110(c)(4)(B)

Violation Description Failed to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day. Specifically, it was noted at the time of the investigation that the water system was not monitoring the disinfectant residual on weekends.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to monitor the disinfectant residual on a daily basis could result in customers of the water system being exposed to significant amounts contaminants in the drinking water which would exceed levels that are protective of human health.

Adjustment $500

$500

Violation Events

Number of Violation Events 1 | 2 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $500

One monthly event is recommended, calculated from the date of the investigation, September 20, 2007, to the date of compliance, September 22, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $564

This violation Final Assessed Penalty (adjusted for limits) $564

Economic Benefit Worksheet

Respondent Kempner Water Supply Corporation
Case ID No. 35258
Reg. Ent. Reference No. RN101197549
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)	$50	20-Sep-2007	22-Sep-2007	0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: The delayed costs include the amount to initiate a disinfectant residual monitoring program that includes weekend monitoring, calculated from the date of the investigation to the date of compliance.

Avoided Costs (ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs))							
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance: $50

TOTAL: $0

PCW

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

Screening Date 28-Dec-2007 **Docket No.** 2008-0128-PWS-E

Respondent Kempner Water Supply Corporation

Case ID No. 35258

Reg. Ent. Reference No. RN101197549

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.46(l)

Violation Description Failed to flush all dead-end mains at monthly intervals. Specifically, it was noted during the investigation that dead-end mains were not flushed during May 2007.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to flush all dead-end mains on a monthly basis could result in customers of the water system being exposed to a significant amount of contaminants which would not exceed levels that are protective of human health.

Adjustment $750

$250

Violation Events

Number of Violation Events 1

31 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $250

One quarterly event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $53

Statutory Limit Test

Violation Final Penalty Total $282

This violation Final Assessed Penalty (adjusted for limits) $282

Economic Benefit Worksheet

Respondent Kempner Water Supply Corporation
Case ID No. 35258
Reg. Ent. Reference No. RN101197549
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]	$50	1-May-2007	31-May-2007	1.0	$3	$50	$53
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	The avoided costs include the amount to flush the dead-end mains in May 2007.						

Approx. Cost of Compliance $50

TOTAL $53

Screening Date 28-Dec-2007 **Docket No.** 2008-0128-PWS-E **PCW**

Respondent Kempner Water Supply Corporation *Policy Revision 2 (September 2002)*

Case ID No. 35258 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101197549

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code §§ 290.122(a)(2) and 290.46(q)

Violation Description Failed to institute all necessary special precautions, including issuing a boil water notice to the customers of the water system within 24 hours following an event where the disinfectant residual drops below 0.20 milligrams per liter ("mg/L") free chlorine or 0.50 mg/L total chlorine. Specifically, on September 15, 2006, records show that the chlorine residual was below 0.20 mg/L free chlorine and 0.50 mg/L total chlorine, but no boil water notice was issued within 24 hours after the low chlorine residual occurrence.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

OR

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $750

$250

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $250

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $100

Statutory Limit Test

Violation Final Penalty Total $282

This violation Final Assessed Penalty (adjusted for limits) $282

Economic Benefit Worksheet

Respondent Kempner Water Supply Corporation
Case ID No. 35258
Reg. Ent. Reference No. RN101197549
Media Public Water Supply
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]	$100	15-Sep-2006	16-Sep-2006	0.0	$0	$100	$100
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	The avoided costs include the amount to issue a boil water notice to the customers of the water system, calculated for the 24 hours following the occurrence of low disinfectant residuals.						

Approx. Cost of Compliance $100 **TOTAL** $100

Screening Date 28-Dec-2007 **Docket No.** 2008-0128-PWS-E **PCW**

Respondent Kempner Water Supply Corporation *Policy Revision 2 (September 2002)*

Case ID No. 35258 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101197549

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 290.110(b)(4) and Tex. Health & Safety Code § 341.0315(c)

Violation Description Failed to maintain the disinfectant residual concentration throughout the distribution system at a minimum of 0.20 mg/L free chlorine or 0.50 mg/L total chlorine at all times. Specifically, on September 15, 2006, water system records show that the Pecan Creek site had a free chlorine residual of 0.12 mg/L and a total chlorine residual of 0.34 mg/L and the Highway 190 site had a free chlorine residual of 0.17 mg/L and a total chlorine residual of 0.40 mg/L.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Low disinfectant residuals could result in customers of the water system being exposed to significant amounts of contaminants which would not exceed levels that are protective of human health.

Adjustment $750

$250

Violation Events

Number of Violation Events 1 | 1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $250

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $50

Statutory Limit Test

Violation Final Penalty Total $282

This violation Final Assessed Penalty (adjusted for limits) $282

Economic Benefit Worksheet

Respondent Kempner Water Supply Corporation
Case ID No. 35258
Reg. Ent. Reference No. RN101197549
Media Public Water Supply
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]	$50	15-Sep-2006	15-Sep-2006	0.0	$0	$50	$50
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	The avoided costs include the amount to maintain the disinfectant residual throughout the distribution system, calculated for the date that low disinfectant residuals occurred.						

Approx. Cost of Compliance $50

TOTAL $50

Compliance History

Customer/Respondent/Owner-Operator:	CN600642912	Kempner Water Supply Corporation	Classification:	Rating:
Regulated Entity:	RN101197549	KEMPNER WSC	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY WATER LICENSING	REGISTRATION LICENSE		1410028 1410028
Location:	11896 Highway 190, Kempner, Lampasas County			
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	January 04, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 04, 2003 to January 04, 2008			

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

Name: Rebecca Clausewitz Phone: (210) 403-4012

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 01/30/2003 (23147)
2 02/11/2003 (23652)
3 03/21/2003 (27573)
4 05/05/2003 (35195)
5 07/09/2003 (134168)
6 12/07/2007 (598357)

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

1 Date: 02/14/2003 (23652)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.39(j)(1)

Description: Failure to notify the Commission prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(2)

Description: Failure to provide all pressure tanks with a pressure release device.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure to properly maintain the exterior coating on the ground storage tank.

2 Date: 03/24/2003 (27573)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure to properly maintain the exterior coating on the ground storage tank.

3 Date: 05/05/2003 (35195)

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure to properly maintain the exterior coating on the ground storage tank.

4 Date: 09/29/2006 (510300)

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.118(a)
30 TAC Chapter 290, SubChapter F 290.118(b)

Description: Failure to meet the secondary constituent maximum contamination level for manganese.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	
KEMPNER WATER SUPPLY	§	**TEXAS COMMISSION ON**
CORPORATION	§	
RN101197549	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-0128-PWS-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 Kempner Water Supply Corporation ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. 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 public water supply located at 11896 Highway 190 in Kempner, Lampasas County, Texas (the "Facility") that has approximately 3,945 service connections and serves at least 25 people per day for at least 60 days per year.

2. 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.

3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 12, 2007.

4. 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.

5. An administrative penalty in the amount of One Thousand Five Hundred Twenty-Three Dollars ($1,523) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). One Thousand Two Hundred Nineteen Dollars ($1,219) of the administrative penalty shall be conditionally offset by the Respondent's completion of the Supplemental Environmental Project ("SEP") included in this Agreed Order as Attachment A and Three Hundred Four Dollars ($304) 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.

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 the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

8. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:

   a. On September 16, 2006, the disinfectant residual concentration was restored to a minimum of 0.20 milligrams per liter ("mg/L") free chlorine and 0.50 mg/L total chlorine throughout the distribution system;

   b. In June 2007, monthly flushing of dead-end mains was resumed;

   c. On September 22, 2007, began monitoring of the disinfectant residuals once per day; and

   d. On December 20, 2007:

      i. An up-to-date map of the distribution system was provided to the Commission; and

      ii. A written policy was implemented by the Respondent that details the special precautions that must be taken in the event of an outage, low pressure, or low disinfectant residuals.

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:

1. Failed to maintain an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies, in violation of 30 TEX. ADMIN. CODE § 290.46(n)(2), as documented during an investigation conducted on September 20, 2007. Specifically, the map of the system that was made available on the date of the investigation had not been updated since 2001.

2. Failed to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day, in violation of 30 TEX. ADMIN. CODE § 290.110(c)(4)(B), as documented during an investigation conducted on September 20, 2007. Specifically, it was noted at the time of the investigation that the water system was not monitoring the disinfectant residual on weekends.

3. Failed to flush all dead-end mains at monthly intervals, in violation of 30 TEX. ADMIN. CODE § 290.46(l), as documented during an investigation conducted on September 20, 2007. Specifically, it was noted during the investigation that dead-end mains were not flushed during May 2007.

4. Failed to institute all necessary special precautions, including issuing a boil water notice to the customers of the water system within 24 hours following an event where the disinfectant residual drops below 0.20 mg/L free chlorine or 0.50 mg/L total chlorine, in violation of 30 TEX. ADMIN. CODE §§ 290.122(a)(2) and 290.46(q), as documented during an investigation conducted on September 20, 2007. Specifically, on September 15, 2006, records show that the chlorine residual was below 0.20 mg/L free chlorine and 0.50 mg/L total chlorine, but no boil water notice was issued to the customers within 24 hours of the low disinfectant residual occurrence.

5. Failed to maintain the disinfectant residual concentration throughout the distribution system at a minimum of 0.20 mg/L free chlorine or 0.50 mg/L total chlorine at all times, in violation of 30 TEX. ADMIN. CODE § 290.110(b)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during an investigation conducted on September 20, 2007. Specifically, on September 15, 2006, water system records show that the Pecan Creek site had a free chlorine residual of 0.12 mg/L and a total chlorine residual of 0.34 mg/L and the Highway 190 site had a free chlorine residual of 0.17 mg/L and a total chlorine residual of 0.40 mg/L.

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 5 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: Kempner Water Supply Corporation, Docket No. 2008-0128-PWS-E" to:

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

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 5 above, One Thousand Two Hundred Nineteen Dollars ($1,219) of the assessed administrative penalty shall be offset with the condition that the Respondent complete the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

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 agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

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

_____ 6/30/2008
For the Executive Director 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.

_____ 3-26-08
Signature Date

Robert R. Bikoski President
Name (Printed or typed) Title
Authorized Representative of
Kempner Water Supply Corporation

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.

Attachment A
Docket Number: 2008-0128-PWS-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	**Kempner Water Supply Corporation**
Payable Penalty Amount:	**One Thousand Two Hundred Nineteen Dollars ($1,219)**
SEP Amount:	**One Thousand Two Hundred Nineteen Dollars ($1,219)**
Type of SEP:	**Pre-approved**
Third-Party Recipient:	**Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Unauthorized Trash Dump Clean-Up**
Location of SEP:	**Lampasas County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.