

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2005-1166-MWD-E **TCEQ ID:** RN101919553 **CASE NO.:** 24906

**RESPONDENT NAME:** City of Kerens

|   |   |  |
|---|---|--|
| <b>ORDER TYPE:</b>  |   |  |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER   | <input type="checkbox"/> FINDINGS AGREED ORDER              | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING       |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER   | <input type="checkbox"/> SHUTDOWN ORDER                     | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER  | <input type="checkbox"/> EMERGENCY ORDER                    |  |
| <b>CASE TYPE:</b>   |   |  |
| <input type="checkbox"/> AIR  | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE              |
| <input type="checkbox"/> PUBLIC WATER SUPPLY  | <input type="checkbox"/> PETROLEUM STORAGE TANKS            | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION                  |
| <input checked="" type="checkbox"/> WATER QUALITY   | <input type="checkbox"/> SEWAGE SLUDGE                      | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL               |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE  | <input type="checkbox"/> RADIOACTIVE WASTE                  | <input type="checkbox"/> DRY CLEANER REGISTRATION                    |
| <p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Kerens Wastewater Treatment Plant Collection Line, located at 200 Daniel Drive, Kerens, Navarro County</p> <p><b>TYPE OF OPERATION:</b> Wastewater collection line</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received November 17, 2004, alleging an unauthorized discharge. The investigator discovered that cleanouts were opened to prevent the apartments from being flooded with sewage. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 7, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b><br/> <b>TCEQ Attorney/SEP Coordinator:</b> Ms. Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223<br/> <b>TCEQ Enforcement Coordinator:</b> Ms. Pamela Campbell, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4493;<br/>                     Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171<br/> <b>Respondent:</b> The Honorable Joe B. Baxter, Mayor, City of Kerens, P.O. Box 160, Kerens, Texas 75144<br/>                     Ms. Cindy Scott, City Administrator, City of Kerens, P.O. Box 160, Kerens, Texas 75144<br/> <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p> |   |  |

**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION  | PENALTY CONSIDERATIONS  | CORRECTIVE ACTIONS TAKEN/REQUIRED  |
|--|---|--|
| <p><b>Type of Investigation:</b><br/> <input checked="" type="checkbox"/> Complaint<br/> <input type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> November 17, 2004</p> <p><b>Date of Investigation Relating to this Case:</b> November 23, 2004</p> <p><b>Date of NOV/NOE Relating to this Case:</b> December 17, 2004 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>Failed to prevent an unauthorized discharge from stormwater inflow and infiltration at the Kerens Apartments [30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System Permit No. 10745001 Permit Conditions No. 2(g), and TEX. WATER CODE § 26.121(a)(1)].</p> | <p><b>Total Assessed:</b> \$3,300</p> <p><b>Total Deferred:</b> \$660<br/> <input checked="" type="checkbox"/> Expedited Settlement<br/> <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$2,640</p> <p><b>Total Paid (Due) to General Revenue:</b> \$0</p> <p><b>Site Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. In January 2003, began initial planning to replace and/or repair the sewer lines at the Kerens Apartments; and</p> <p>b. On July 22, 2005, received a Community Development Block Grant to fund the project.</p> <p>c. In July 2007, completed construction of the collection lines at the Kerens Apartments.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> |

Additional IDs.: TPDES Permit No. 10745001

**Attachment A**  
**Docket Numbers: 2005-1166-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

|                           |  |
|---------------------------|--|
| <b>Respondent:</b>        | City of Kerens                                   |
| <b>Penalty Amount:</b>    | Two Thousand Six Hundred Forty Dollars (\$2,640) |
| <b>SEP Offset Amount:</b> | Two Thousand Six Hundred Forty Dollars (\$2,640) |
| <b>Type of SEP:</b>       | Custom   |
| <b>Location of SEP:</b>   | Navarro County                                   |

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

**1. Project Description**

A. Project

The Respondent shall hold a one-day event for the collection, recycling, or disposal of tires, batteries, electronics, and lawn clippings. The Respondent shall offer to the public a designated drop-off location where the public can drop off wastes for disposal and recycling at no cost to the citizens. The event will be advertised in a local newspaper to ensure public awareness of the event.

The Respondent shall ensure that the event:

- occurs on at least one weekend day during daylight hours;
- offers to the public a convenient drop-off location;
- includes recycling of electronics and vegetative debris; and
- is advertised to the public

The Respondent shall collect, transport, dispose of, or recycle the collected materials. SEP monies will be used for heavy equipment such as roll-off bins, trailers, overtime labor of employees, public announcement of the event, and disposal and recycling costs.

The Respondent shall perform this project in accordance with all federal, state and local laws and regulations. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs. The Respondent recognizes that additional funds over and above the SEP Offset Amount may be necessary to conduct the event.

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



B. Environmental Benefit

The recycling portion of the event will include recycling of E-waste materials. E-waste materials include computers and related information technologies such as workstations, scanners, printers, hand-held diagnostic and screening tools, cell phones, servers, and televisions, among many others. Cathode ray tubes (“CRT”) are the picture tubes in computers, monitors and TVs. With the rapid evolution of technology, computers and TVs containing CRTs become obsolete in a short period of time and are simply discarded, often in landfills. A typical 17-inch CRT contains approximately two pounds of lead and larger CRTs may contain up to ten pounds of lead. E-waste can contain lead, mercury, cadmium, hexavalent chromium and brominated flame retardants.

This SEP will limit potentially toxic or hazardous E-waste from the waste stream destined for disposal or incineration and to divert the E-waste to environmentally sensitive recycling. This will save valuable landfill capacity and allow the recycler to re-utilize E-waste components, including CRTs.

This SEP will also provide a discernible environmental benefit by providing for the proper disposal of wastes that can leach chemicals into the soil, water, and air, as well as help rid the community of the dangers and health threats associated with non-regulated dumping. Collection of waste tires will help prevent illegal tire dumps and help rid the community of the attractive nuisance that can harbor vermin, as well as mosquitoes that can carry West Nile virus. The event will also help prevent potential release of harmful chemicals into the atmosphere should the illegally dumped tires catch fire.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that it may spend more than the Offset Amount to complete the project.

**2. Performance Schedule**

The Respondent shall complete the project within one year after the effective date of this Agreed Order.

**3. Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion with the time required above. There are no other interim performance milestones for this collection and recycling event.

B. Final Report

Within 90 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;



2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Number of tires, appliances, batteries, and pounds of electronic waste;
5. Photographs of the project;
6. Manifests showing proper disposal of wastes or recycling of materials; and
7. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

**5. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the TCEQ staff may require immediate payment of all or part of the SEP Offset Amount. The Respondent agrees that it will contribute any monetary shortages in the Offset Amount after performance of the project to TCEQ within 120 days of completion of the project.

In the event of incomplete performance, the Respondent shall include the docket number of this Agreed Order and a note with any payment, explaining that the payment is for a SEP reimbursement. The payment for any amount due shall be made out to the "Texas Commission on Environmental Quality" and mailed to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**6. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must also clearly state 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.

**7. Clean Texas Program**

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

**8. Other SEPs by TCEQ or Other Agencies**

The SEP funds identified in this Agreed Order have not been, and shall not be, included as a SEP for the Respondent under any other orders 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 May 19, 2005

|              |                 |             |                  |             |                |  |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 28-Dec-2004 | <b>Screening</b> | 13-Jan-2005 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 25-Aug-2005 |                  |             |                |  |

|  |                     |
|--|---------------------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                     |
| <b>Respondent</b>                      | City of Kerens      |
| <b>Reg. Ent. Ref. No.</b>              | RN101919553         |
| <b>Facility/Site Region</b>            | 4-Dallas/Fort Worth |
| <b>Major/Minor Source</b>              | Minor Source        |

|  |                 |                          |                    |
|--|-----------------|--------------------------|--------------------|
| <b>CASE INFORMATION</b>                |                 |                          |                    |
| <b>Enf./Case ID No.</b>                | 24906           | <b>No. of Violations</b> | 1                  |
| <b>Docket No.</b>                      | 2005-1166-MWD-E | <b>Order Type</b>        | 1660               |
| <b>Media Program(s)</b>                | Water Quality   | <b>Enf. Coordinator</b>  | Pamela Campbell    |
| <b>Multi-Media</b>                     |                 | <b>EC's Team</b>         | Enforcement Team 1 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$0             | <b>Maximum</b>           | \$10,000           |

**Penalty Calculation Section**

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

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

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

**Good Faith Effort to Comply**  Reduction **Subtotal 5**

|               |                                     |                               |
|---------------|-------------------------------------|-------------------------------|
|               | Before NOV                          | NOV to EDPRP/Settlement Offer |
| Extraordinary | <input type="text"/>                | <input type="text"/>          |
| Ordinary      | <input type="text"/>                | <input type="text"/>          |
| N/A           | <input checked="" type="checkbox"/> | (mark with a small x)         |

**Notes**

**Economic Benefit**  Enhancement\* **Subtotal 6**

|                                   |                                       |  |
|-----------------------------------|---------------------------------------|--|
| <b>Total EB Amounts</b>           | <input type="text" value="\$1,847"/>  | <small>*Capped at the Total EB \$ Amount</small> |
| <b>Approx. Cost of Compliance</b> | <input type="text" value="\$10,000"/> |  |

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

**Screening Date** 13-Jan-2005  
**Respondent** City of Kerens  
**Case ID No.** 24906  
**Reg. Ent. Reference No.** RN101919553  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Pamela Campbell

**Docket No.** 2005-1166-MWD-E**PCW**

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

**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> )   | 6                 | 30%     |
|                               | Other written NOVs   | 1                 | 2%      |
| 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</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)** 32%>> **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** The respondent received one NOV for the same violations, one NOV for unrelated violations, and has five months of self-reported effluent violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 32%

**Screening Date** 13-Jan-2005

**Docket No.** 2005-1166-MWD-E

**PCW**

**Respondent** City of Kerens

*Policy Revision 2 (September 2002)*

**Case ID No.** 24906

*PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN101919553

**Media [Statute]** Water Quality

**Enf. Coordinator** Pamela Campbell

**Violation Number**

**Primary Rule Cite(s)** 30 Tex. Admin. Code § 305.125(1), TPDES Permit No. 10745001 Permit Conditions No. 2(g), and Tex. Water Code § 26.121(a)(1)  
**Secondary Rule Cite(s)**

**Violation Description**  
 Failure to prevent an unauthorized discharge from stormwater inflow and infiltration ("I/I") at the Kerens Apartments. On November 17, 2004, the Dallas/Fort Worth Regional Office received a complaint of a sewer overflow at the Kerens Apartments, 200 Daniel Drive from a manhole, cleanouts, and into apartment units. Evidence of the unauthorized discharge was documented during an investigation on November 23, 2004. During the investigation, samples were collected at the cleanouts near units 1 & 2 and at the manhole. These sample results indicated fecal coliform levels of 140,000 colonies per 100 milliliter ("colonies/mL") and more than 200,000 colonies/mL, respectively.

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

|         |           | Harm                 |                                     |                      |  |
|---------|-----------|----------------------|-------------------------------------|----------------------|--|
| Release |           | Major                | Moderate                            | Minor                |  |
| OR      | Actual    | <input type="text"/> | <input checked="" type="checkbox"/> | <input type="text"/> | Percent <input type="text" value="25%"/> |
|         | Potential | <input type="text"/> | <input type="text"/>                | <input type="text"/> |  |

>> **Programmatic Matrix**

| Falsification        | Major                | Moderate             | Minor                | Percent              |
|----------------------|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> |

**Matrix Notes**  
 Human health and the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or the environment as a result of this violation.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

|                                |              |                                     |
|--------------------------------|--------------|-------------------------------------|
| mark only one<br>use a small x | daily        | <input type="text"/>                |
|                                | monthly      | <input type="text"/>                |
|                                | quarterly    | <input type="text"/>                |
|                                | semiannual   | <input type="text"/>                |
|                                | annual       | <input type="text"/>                |
|                                | single event | <input checked="" type="checkbox"/> |

**Violation Base Penalty**

One single event is recommended.

**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 City of Kerens  
 Case ID No. 24906  
 Reg. Ent. Reference No. RN101919553  
 Media [Statute] Water Quality  
 Violation No. 1

|                  |                       |
|------------------|-----------------------|
| Percent Interest | Years of Depreciation |
| 5.0              | 15                    |

| Item Description         | Item Cost<br>No commas or \$ | Date Required | Final Date  | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|------------------------------|---------------|-------------|-----|----------------|---------------|-----------|
| <b>Delayed Costs</b>     |                              |               |             |     |                |               |           |
| Equipment                |                              |               |             | 0.0 | \$0            | \$0           | \$0       |
| Buildings                |                              |               |             | 0.0 | \$0            | \$0           | \$0       |
| Other (as needed)        |                              |               |             | 0.0 | \$0            | \$0           | \$0       |
| Engineering/construction | \$10,000                     | 17-Nov-2004   | 08-Jul-2007 | 2.6 | \$88           | \$1,759       | \$1,847   |
| 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: This is the estimated cost to repair and/or replace the collection system lines at the Kerens Apartments. Date Required is the date the complaint was received that the sewer overflowed. Final Date is 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 **\$10,000** **TOTAL \$1,847**

## Compliance History

|   |  |   |                   |
|---|--|---|-------------------|
| Customer/Respondent/Owner-Operator:           | CN600605349      City of Kerens  | Classification: AVERAGE                   | Rating: 2.33      |
| Regulated Entity:                             | RN101919553      CITY OF KERENS  | Classification: AVERAGE                   | Site Rating: 0.31 |
| ID Number(s):                                 | WASTEWATER   | PERMIT                                    | WQ0010745001      |
|   | WASTEWATER   | PERMIT                                    | TPDES0023027      |
|   | WASTEWATER LICENSING   | LICENSE                                   | WQ0010745001      |
| Location:                                     | LOCATED APPROX 0.5 MI SW OF THE CITY OF<br>KERENS ADJACENT TO FM 633 IN NAVARRO COUNTY<br>TX | Rating Date: 9/1/2004 Repeat Violator: NO |                   |
| TCEQ Region:                                  | REGION 04 - DFW METROPLEX  |   |                   |
| Date Compliance History Prepared:             | July 19, 2005  |   |                   |
| Agency Decision Requiring Compliance History: | Enforcement  |   |                   |
| Compliance Period:                            | July 19, 2000 to July 19, 2005   |   |                   |

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

Name: Pamela Campbell Phone: 512 239-4493

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No  |
| 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  | 02/27/2004 | (298970) |
| 2  | 03/17/2004 | (298973) |
| 3  | 04/22/2004 | (298974) |
| 4  | 05/31/2001 | (298975) |
| 5  | 05/24/2004 | (298977) |
| 6  | 05/31/2001 | (298978) |
| 7  | 05/31/2001 | (298979) |
| 8  | 05/31/2001 | (298982) |
| 9  | 05/31/2001 | (298983) |
| 10 | 05/31/2001 | (298985) |
| 11 | 05/31/2001 | (298986) |
| 12 | 02/25/2002 | (166835) |
| 13 | 02/28/2003 | (166836) |
| 14 | 08/28/2003 | (298988) |
| 15 | 04/20/2001 | (166837) |
| 16 | 05/31/2001 | (298989) |
| 17 | 03/18/2002 | (166838) |
| 18 | 12/15/2003 | (250377) |
| 19 | 05/31/2001 | (298990) |

20 03/24/2003 (166839)  
21 04/24/2002 (166841)  
22 09/19/2003 (298992)  
23 04/24/2003 (166842)  
24 05/31/2001 (298993)  
25 05/23/2002 (166843)  
26 05/19/2003 (166844)  
27 10/28/2003 (298995)  
28 06/24/2002 (166846)  
29 05/31/2001 (298996)  
30 06/20/2003 (166847)  
31 11/18/2003 (298997)  
32 07/18/2002 (166848)  
33 05/31/2001 (298998)  
34 07/24/2003 (166849)  
35 05/31/2001 (298999)  
36 01/11/2001 (38468)  
37 08/20/2001 (166850)  
38 05/31/2001 (299000)  
39 08/19/2002 (166851)  
40 12/18/2003 (299001)  
41 09/21/2001 (166852)  
42 09/26/2002 (166853)  
43 10/15/2004 (147322)  
44 05/31/2001 (299002)  
45 05/31/2001 (299003)  
46 10/19/2001 (166854)  
47 01/29/2004 (299004)  
48 02/09/2001 (285705)  
49 10/21/2002 (166855)  
50 05/31/2001 (299005)  
51 11/21/2001 (166857)  
52 07/01/2004 (353569)  
53 11/21/2002 (166858)  
54 07/26/2004 (353570)  
55 08/24/2004 (353571)  
56 01/18/2001 (166860)  
57 09/23/2004 (353572)  
58 12/19/2001 (166861)  
59 12/19/2002 (166862)  
60 10/19/2004 (353573)  
61 11/29/2004 (353574)  
62 01/22/2002 (166864)  
63 01/21/2003 (166865)  
64 02/21/2005 (382684)  
65 01/03/2005 (382685)  
66 03/06/2003 (21085)  
67 01/20/2005 (382686)

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

Date: 02/21/2003 (21085)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter O 305.535(c)(1)[G]

Description: Unauthorized discharge from a lift station in the collection system.

|  |                          |
|--|--------------------------|
| Self Report? NO  | Classification: Minor    |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  |                          |
| Description: Failure to comply with the effluent chlorine limit.   |                          |
| Self Report? NO  | Classification: Minor    |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)  |                          |
| 30 TAC Chapter 305, SubChapter F 305.125(11)(C)[G]   |                          |
| Description: Sludge disposal manifests and annual sludge report not available for review or submitted for review at the time of the investigation. |                          |
| Date: 02/28/2002 (166838)  |                          |
| Self Report? YES   | Classification: Moderate |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  |                          |
| TWC Chapter 26 26.121(a)[G]  |                          |
| Description: Failure to meet the limit for one or more permit parameter  |                          |
| Date: 01/11/2001 (38468)   |                          |
| Self Report? NO  | Classification: Moderate |
| Rqmt Prov: OP IA   |                          |
| Description: FAILURE TO COMPLY   |                          |
| Date: 11/30/2003 (299001)  |                          |
| Self Report? YES   | Classification: Moderate |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  |                          |
| TWC Chapter 26 26.121(a)[G]  |                          |
| Description: Failure to meet the limit for one or more permit parameter  |                          |
| Date: 08/31/2002 (166853)  |                          |
| Self Report? YES   | Classification: Moderate |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  |                          |
| TWC Chapter 26 26.121(a)[G]  |                          |
| Description: Failure to meet the limit for one or more permit parameter  |                          |
| Date: 07/31/2004 (353571)  |                          |
| Self Report? YES   | Classification: Moderate |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  |                          |
| TWC Chapter 26 26.121(a)[G]  |                          |
| Description: Failure to meet the limit for one or more permit parameter  |                          |
| Date: 08/31/2004 (353572)  |                          |
| Self Report? YES   | Classification: Moderate |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  |                          |
| TWC Chapter 26 26.121(a)[G]  |                          |
| Description: Failure to meet the limit for one or more permit parameter  |                          |

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF KERENS  
RN101919553**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2005-1166-MWD-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Kerens ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates the City of Kerens Wastewater Treatment Facility with a collection system line located in the 200 block of Daniel Drive in Navarro County, Texas (the "Site").
2. The City has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about December 22, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Three Hundred Dollars (\$3,300) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Six Hundred Sixty Dollars (\$660) is deferred contingent upon the City'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 City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty. Two Thousand Six Hundred Forty Dollars (\$2,640) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").



7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City has implemented the following corrective measures at the Site:
  - a. In January 2003, began initial planning to replace and/or repair the sewer lines at the Kerens Apartments;
  - b. On July 22, 2005, received a Community Development Block Grant to fund the project; and
  - c. In July 2007, completed construction of the collection lines at the Kerens Apartments.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Site, the City is alleged to have failed to prevent an unauthorized discharge from stormwater inflow and infiltration at the Kerens Apartments, in violation of 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System Permit No. 10745001 Permit Conditions No. 2(g), and TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on November 23, 2004.

## **III. DENIALS**

The City generally denies each allegation in Section II ("Allegations").



#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Kerens, Docket No. 2005-1166-MWD-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Two Thousand Six Hundred Forty Dollars (\$2,640) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City'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 City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the City 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 City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City 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 City 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.



City of Kerens

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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 City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



City of Kerens  
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**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John Zedler*  
For the Executive Director

5/21/2008  
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, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*C. Scott*  
Signature

May 9, 2008  
Date

Cindy Scott  
Name (Printed or typed)  
Authorized Representative of  
City of Kerens

City Administrator  
Title

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



**Attachment A**  
**Docket Numbers: 2005-1166-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Kerens  
**Penalty Amount:** Two Thousand Six Hundred Forty Dollars (\$2,640)  
**SEP Offset Amount:** Two Thousand Six Hundred Forty Dollars (\$2,640)  
**Type of SEP:** Custom  
**Location of SEP:** Navarro County

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

**1. Project Description**

A. Project

The Respondent shall hold a one-day event for the collection, recycling, or disposal of tires, batteries, electronics, and lawn clippings. The Respondent shall offer to the public a designated drop-off location where the public can drop off wastes for disposal and recycling at no cost to the citizens. The event will be advertised in a local newspaper to ensure public awareness of the event.

The Respondent shall ensure that the event:

- occurs on at least one weekend day during daylight hours;
- offers to the public a convenient drop-off location;
- includes recycling of electronics and vegetative debris; and
- is advertised to the public

The Respondent shall collect, transport, dispose of, or recycle the collected materials. SEP monies will be used for heavy equipment such as roll-off bins, trailers, overtime labor of employees, public announcement of the event, and disposal and recycling costs.

The Respondent shall perform this project in accordance with all federal, state and local laws and regulations. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs. The Respondent recognizes that additional funds over and above the SEP Offset Amount may be necessary to conduct the event.

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



**B. Environmental Benefit**

The recycling portion of the event will include recycling of E-waste materials. E-waste materials include computers and related information technologies such as workstations, scanners, printers, hand-held diagnostic and screening tools, cell phones, servers, and televisions, among many others. Cathode ray tubes (“CRT”) are the picture tubes in computers, monitors and TVs. With the rapid evolution of technology, computers and TVs containing CRTs become obsolete in a short period of time and are simply discarded, often in landfills. A typical 17-inch CRT contains approximately two pounds of lead and larger CRTs may contain up to ten pounds of lead. E-waste can contain lead, mercury, cadmium, hexavalent chromium and brominated flame retardants.

This SEP will limit potentially toxic or hazardous E-waste from the waste stream destined for disposal or incineration and to divert the E-waste to environmentally sensitive recycling. This will save valuable landfill capacity and allow the recycler to re-utilize E-waste components, including CRTs.

This SEP will also provide a discernible environmental benefit by providing for the proper disposal of wastes that can leach chemicals into the soil, water, and air, as well as help rid the community of the dangers and health threats associated with non-regulated dumping. Collection of waste tires will help prevent illegal tire dumps and help rid the community of the attractive nuisance that can harbor vermin, as well as mosquitoes that can carry West Nile virus. The event will also help prevent potential release of harmful chemicals into the atmosphere should the illegally dumped tires catch fire.

**C. Minimum Expenditure**

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that it may spend more than the Offset Amount to complete the project.

**2. Performance Schedule**

The Respondent shall complete the project within one year after the effective date of this Agreed Order.

**3. Reporting**

**A. Progress Reports**

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion with the time required above. There are no other interim performance milestones for this collection and recycling event.

**B. Final Report**

Within 90 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and costs incurred with receipts, copies of checks, or other verifying documentation attached;



2. The total amount of costs incurred;
3. A statement of quantifiable environmental benefits;
4. Number of tires, appliances, batteries, and pounds of electronic waste;
5. Photographs of the project;
6. Manifests showing proper disposal of wastes or recycling of materials; and
7. Any additional information the Respondent believes will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Additional Information and Access**

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

**5. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the TCEQ staff may require immediate payment of all or part of the SEP Offset Amount. The Respondent agrees that it will contribute any monetary shortages in the Offset Amount after performance of the project to TCEQ within 120 days of completion of the project.

In the event of incomplete performance, the Respondent shall include the docket number of this Agreed Order and a note with any payment, explaining that the payment is for a SEP reimbursement. The payment for any amount due shall be made out to the "Texas Commission on Environmental Quality" and mailed to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**6. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must also clearly state 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.

**7. Clean Texas Program**

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

**8. Other SEPs by TCEQ or Other Agencies**

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

