

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO. 2007-0141-WR-E TCEQ ID: RN104777941 CASE NO.: 32460
RESPONDENT NAME: KIRTLEY GRAVEL CO., INC. DBA SHARP SAND AND GRAVEL**

ORDER TYPE:		
<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	
CASE TYPE:		
<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 RIGHTS	<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>SITE WHERE VIOLATION(S) OCCURRED: 145 Kirtley Road, Smithville, Fayette County</p> <p>TYPE OF OPERATION: Sand and gravel mining facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 7, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. James Sallans, Litigation Division, MC 175, (512)239-2053 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Samuel Short, Air Enforcement Section, MC 219, (512) 239-4493 TCEQ Regional Contact: Ms. Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-2929 Respondent: Mr. Johnny D. Sharp, President, Kirtley Gravel Co., Inc., 145 Kirtley Road, Smithville, Texas 78957 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 4, 2007</p> <p>Date of NOE Relating to this Case: January 4, 2007.</p> <p>Background Facts: The EDP RP was filed on September 26, 2007. Respondent filed an answer and the action was referred to SOAH. On April 29, 2008, the Agreed Order was signed by Respondent.</p> <p>WR: Failed to obtain the appropriate authorization prior to pumping state water from Barton Creek for industrial use [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.081].</p>	<p>Total Assessed: \$525</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$525</p> <p>Respondent has paid the administrative penalty in full.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that Respondent has implemented the following corrective measures at the Facility in response to this enforcement action:</p> <ol style="list-style-type: none"> 1. Diversions of water from Barton Creek have ceased; 2. Mining operations have ceased; and 3. The bank of Barton Creek has been repaired and vegetative cover reestablished.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	8-Jan-2007		
	PCW	2-Feb-2007	Screening	30-Jan-2007
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Kirtley Gravel Co., Inc. dba Sharp Sand and Gravel		
Reg. Ent. Ref. No.	RN104777941		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	32460	No. of Violations	1
Docket No.	2007-0141-WR-E	Order Type	1660
Media Program(s)	Water Rights	Enf. Coordinator	Samuel Short
Multi-Media		EC's Team	EnforcementTeam 4
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$5,000

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 5% Enhancement *Subtotals 2, 3, & 7*

Notes: A 5% enhancement is recommended for having one NOV for the same or similar violations within the last five years.

Culpability No 0% Enhancement *Subtotal 4*

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction *Subtotal 5*

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

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* *Subtotal 6*

Total EB Amounts	\$40	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,000	

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 0% Reduction *Adjustment*

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

Notes

No deferral offered on non-expedited orders.

PAYABLE PENALTY

Screening Date 30-Jan-2007

Docket No. 2007-0141-WR-E

PCW

Respondent Kirtley Gravel Co., Inc. dba Sharp Sand and Gravel

Policy Revision 2 (September 2002)

Case ID No. 32460

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN104777941

Media [Statute] Water Rights

Enf. Coordinator Samuel Short

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)	1	5%
	Other written NOVs	0	0%
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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

A 5% enhancement is recommended for having one NOV for the same or similar violations within the last five years.

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

Screening Date 30-Jan-2007

Docket No. 2007-0141-MLM-E

PCW

Respondent Kirtley Gravel Co., Inc. dba Sharp Sand and Gravel

Policy Revision 2 (September 2002)

Case ID No. 32460

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN104777941

Media [Statute] Water Rights

Enf. Coordinator Samuel Short

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 297.11 and Tex. Water Code § 11.081

Violation Description

Failed to obtain the appropriate authorization prior to pumping state water from Barton Creek for industrial use. Specifically, an industrial sized pump was pumping water from the creek for use in washing gravel.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Unauthorized diversion, taking, or storage of a significant amount of state water or a significant unauthorized change in flood elevation of a stream which does not detrimentally affect aquatic life or result in a safety hazard, property damage, or economic loss.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

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

Violation Base Penalty

One quarterly event is recommended for the period from the investigation date of January 4, 2007 through the screening date of January 30, 2007.

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: Kirtley Gravel Co., Inc. dba Sharp Sand and Gravel
Case ID No.: 32460
Reg. Ent. Reference No.: RN104777941
Media: Water Rights
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
<small>No commas or \$</small>							

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	\$1,000	4-Jan-2007	25-Oct-2007	0.8	\$40	n/a	\$40
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to obtain a water rights permit, calculated from the date of 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	\$1,000	TOTAL	\$40
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Compliance History

Customer/Respondent/Owner-Operator:	CN603143694 Kirtley Gravel Co.,Inc	Classification: AVERAGE	Rating: 5.50
Regulated Entity:	RN104777941 SHARP SAND AND GRAVEL	Classification: AVERAGE	Site Rating: 5.50
ID Number(s):			
Location:	145 N KIRTLEY RD, SMITHVILLE, TX, 78957	Rating Date: 9/1/2006	Repeat Violator: NO
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	January 30, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 30, 2002 to January 30, 2007		

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

Name: Samuel Short Phone: (512) 239-5363

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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 01/04/2007 (535552)
 - 2 01/19/2006 (452410)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 10/14/2005 (400793)
 - Self Report? NO Classification: Moderate
 - Citation: TWC Chapter 26 26.121
 - Description: Unauthorized discharge of sediment to Bartons Creek.
 - Self Report? NO Classification: Major
 - Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 - Description: Failure to obtain coverage under the Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP).
 - Self Report? NO Classification: Moderate
 - Citation: 2B TWC Chapter 11, SubChapter A 11.081
 - Description: Failure to obtain proper authorization for the use of state water for industrial activities.
- 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
KIRTLEY GRAVEL CO., INC. DBA
SHARP SAND AND GRAVEL,
RN104777941

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0141-WR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Kirtley Gravel Co., Inc. dba Sharp Sand and Gravel ("Kirtley Gravel") under the authority of TEX. WATER CODE chs. 7 and 11. The Executive Director of the TCEQ, represented by the Litigation Division, and Kirtley Gravel, appear before the Commission and together stipulate that:

1. Kirtley Gravel owns and operated a sand and gravel mining facility located at 500 N. Kirtley Road, Smithville, Fayette County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 11 and TCEQ rules.
3. The Commission and Kirtley Gravel agree that the Commission has jurisdiction to enter this Agreed Order, and that Kirtley Gravel is subject to the Commission's jurisdiction.
4. Kirtley Gravel received notice of the violation alleged in Section II ("Allegations") on or about January 4, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Kirtley Gravel of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of five hundred twenty-five dollars (\$525.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Kirtley Gravel has paid five hundred twenty-five dollars (\$525.00) of the administrative penalty.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Kirtley Gravel 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 Kirtley Gravel has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Diversions of water from Bartons Creek have ceased;
 - b. Mining operations have ceased; and
 - c. The bank of Bartons Creek has been repaired and vegetative cover reestablished.
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 Kirtley Gravel 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

Kirtley Gravel is alleged to have violated 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.081 by failing to obtain the appropriate authorization prior to pumping state water from Bartons Creek for industrial use. Specifically, an industrial sized pump was pumping water from the creek for use in washing gravel as documented on January 4, 2008 during an inspection.

III. DENIALS

Kirtley Gravel generally denies each allegation in Section II ("Allegations").

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Kirtley Gravel pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Kirtley Gravel's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Kirtley Gravel Co., Inc. dba Sharp Sand and Gravel, Docket No. 2007-0141-WR-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 provisions of this Agreed Order shall apply to and be binding upon Kirtley Gravel. Kirtley Gravel 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against Kirtley Gravel 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.
4. 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.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Kirtley Gravel, or three days after the date on which the Commission mails notice of the Order to Kirtley Gravel, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

MEM-E
WR
NWS

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Bryce R. Kule

For the Executive Director

8/22/08

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of 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.

Johnny D. Sharp
Signature

4-29-08
Date

JOHNNY D. SHARP

Name (Printed or typed)

PRESIDENT

Title

Authorized representative of

Kirtley Gravel Co., Inc. dba Sharp Sand and Gravel