

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-0912-SLG-E TCEQ ID: RN105124341 CASE NO.: 36019  
RESPONDENT NAME: DANNY J. SHIPMAN, JR. DBA KIM'S SEPTIC SERVICE**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 type="checkbox"/> WATER QUALITY	<input checked="" 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> A bar ditch along Farm to Market Road 3003 in Graham, Young County</p> <p><b>TYPE OF OPERATION:</b> Registered septic sludge transporter business</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on February 24, 2008, alleging an unauthorized discharge of septic tank waste. There is no record of additional pending enforcement actions regarding this respondent.</p> <p><b>INTERESTED PARTIES:</b> The complainant has not indicated a desire to protest this action or speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on February 9, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>                  TCEQ Attorney: Ms. Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693                  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019                  TCEQ Enforcement Coordinator: Ms. Merrilee Hupp, Water Enforcement Section, MC 169, (512) 239-4490                  TCEQ Regional Contact: Mr. Clifford Moore, Abilene Regional Office, R-3, (325) 698-6115                  Respondent: Mr. Danny J. Shipman, Owner, Kim's Septic Service, 3425 Farm to Market Road 3136, Cleburne, Texas 76031                  Respondent's Attorney: 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></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>                      February 24, 2008</p> <p><b>Date of Investigation Relating to this Case:</b>                      March 6, 2008-March 13, 2008</p> <p><b>Date of NOE Relating to this Case:</b>                      May 12, 2008</p> <p><b>Background Facts:</b>                      The EDPRP was filed on October 22, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDPRP. The Respondent has not filed a response, requested a hearing, or scheduled a settlement conference.</p> <p><b>Current Compliance Status:</b>                      Not yet in compliance.</p> <p><b>SLG:</b>                      Failed to prevent the unauthorized discharge of approximately 350 gallons of septic tank waste [TEX WATER CODE § 26.121(a)(1) and 30 TEX ADMIN CODE § 312.143].</p>	<p><b>Total Assessed:</b> \$1,530</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$1,530</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <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>Ordering Provisions</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days, develop and implement written procedures to prevent an unauthorized discharge in the event that the vehicle used by respondent to transport sludge is damaged or otherwise prevented from transporting its contents to an authorized disposal site.</li> <li>2. Within 45 days, submit written certification to demonstrate compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

<b>DATES</b>	Assigned	19-May-2008	Screening	4-Jun-2008	EPA Due	
	PCW	16-Sep-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Danny J. Shipman, Jr. dba Kim's Septic Service		
Reg. Ent. Ref. No.	RN105124341		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	36019	No. of Violations	1
Docket No.	2008-0912-SLG-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Merrilee Hupp
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$1,000</b>
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
<b>Compliance History</b>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>
Notes	No enhancement due to Average Performer classification.	<b>\$0</b>
<b>Culpability</b>	No	0.0% Enhancement
Notes	The Respondent does not meet the culpability criteria.	<b>Subtotal 4</b>
		<b>\$0</b>
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>
		<b>\$0</b>
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>
Total EB Amounts	\$530	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$700	
<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$1,000</b>
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	53.0%	<b>Adjustment</b>
Notes	Enhancement to recover avoided costs.	<b>\$530</b>
		<b>Final Penalty Amount</b>
		<b>\$1,530</b>
<b>STATUTORY LIMIT ADJUSTMENT</b>		<b>Final Assessed Penalty</b>
		<b>\$1,530</b>
<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>
Notes	Deferral not offered for non-expedited settlement.	<b>\$0</b>
<b>PAYABLE PENALTY</b>		<b>\$1,530</b>

**Screening Date** 4-Jun-2008

**Docket No.** 2008-0912-SLG-E

**PCW**

**Respondent** Danny J. Shipman, Jr. dba Kim's Septic Service

Policy Revision 2 (September 2002)

**Case ID No.** 36019

PCW Revision June 12, 2008

**Reg. Ent. Reference No.** RN105124341

**Media [Statute]** Water Quality

**Enf. Coordinator** Merrilee Hupp

### 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> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

Please Enter Yes or No

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

**Adjustment Percentage (Subtotal 2)**

>> **Repeat Violator (Subtotal 3)**

**Adjustment Percentage (Subtotal 3)**

>> **Compliance History Person Classification (Subtotal 7)**

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History**

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

<b>Screening Date</b> 4-Jun-2008	<b>Docket No.</b> 2008-0912-SLG-E	<b>PCW</b>
<b>Respondent</b> Danny J. Shipman, Jr. dba Kim's Septic Service	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 36019	<i>PCW Revision June 12, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN105124341		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Merrilee Hupp		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 312.143 and Tex. Water Code § 26.121(a)(1)"/>	
<b>Violation Description</b>	<input type="text" value="Failed to prevent the unauthorized discharge of approximately 350 gallons of septic tank waste. Specifically, due to mechanical problems, the Respondent released the septic tank waste from the truck into a bar ditch along Farm-to-Market 3003 in Graham, Texas to lessen the weight of the truck."/>	
<b>Base Penalty</b>	<input type="text" value="\$10,000"/>	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
<b>OR</b>	<b>Harm</b>	
	Release    Major    Moderate    Minor	
	Actual <input type="text"/> <input type="text"/> <input checked="" type="text" value="x"/>	<b>Percent</b> <input type="text" value="10%"/>
Potential <input type="text"/> <input type="text"/> <input type="text"/>		
<b>&gt;&gt; Programmatic Matrix</b>		
	<b>Falsification</b> Major    Moderate    Minor	
	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	<input type="text" value="Human health or the environment has been exposed to insignificant amounts of pollutants."/>	
<b>Adjustment</b>	<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>
<b>Violation Events</b>		
Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="101"/> Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>
<b>Violation Base Penalty</b>	<input type="text" value="\$1,000"/>	
<input type="text" value="One quarterly event is recommended from the March 6, 2008 investigation date until the June 4, 2008 screening date."/>		
<b>Good Faith Efforts to Comply</b>		
	<input type="text"/>	<b>Reduction</b> <input type="text" value="\$0"/>
	Before NOV    NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)
<b>Notes</b>	<input type="text"/>	
<b>Violation Subtotal</b>	<input type="text" value="\$1,000"/>	
<b>Economic Benefit (EB) for this violation</b>		
<b>Statutory Limit Test</b>		
Estimated EB Amount	<input type="text" value="\$530"/>	Violation Final Penalty Total <input type="text" value="\$1,530"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$1,530"/>

## Economic Benefit Worksheet

**Respondent** Danny J. Shipman, Jr. dba Kim's Septic Service  
**Case ID No.** 36019  
**Reg. Ent. Reference No.** RN105124341  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$200	24-Feb-2008	6-Mar-2008	0.03	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**  
 Estimated cost to apply lime to the area of the unauthorized discharge. Date required is date of discharge and final date is investigation date when the application of lime had been confirmed.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$500	24-Feb-2008	4-Jun-2008	1.19	\$30	\$500	\$530
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**  
 Estimated cost to transfer septic tank waste and transport it to an authorized site for disposal. Date required is date of discharge and final date is screening date.

**Approx. Cost of Compliance** \$700 **TOTAL** \$530

## Compliance History

Customer/Respondent/Owner-Operator: CN602033615 SHIPMAN, DANNY J JR      Classification: AVERAGE      Rating: 3.01  
Classification: AVERAGE BY DEFAULT Site Rating: 3.01

Regulated Entity: RN105124341 KIMS SEPTIC SERVICES  
ID Number(s): SLUDGE REGISTRATION 23845  
Location: 3425 FM 3136, CLEBURNE, TX, 76031  
Approx. ¼ mi. E. of Ramblin Oaks Dr. on FM 3003,  
Graham, Young Co., Tx.

TCEQ Region: REGION 04 - DFW METROPLEX      Rating Date: 9/1/2007 Repeat Violator: NO

Date Compliance History Prepared: June 03, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 03, 2003 to August 31, 2007

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

Name: Merrilee G. Hupp      Phone: 512-239-4490

### 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.)

N/A

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

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  
DANNY J. SHIPMAN, JR. DBA  
KIM'S SEPTIC SERVICE,  
RN105124341

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2008-0912-SLG-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Danny J. Shipman, Jr. dba Kim's Septic Service ("Mr. Shipman").

The Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Mr. Shipman owns and operates a registered septic sludge transporter business located at 3425 Farm to Market Road 3136, Cleburne, Johnson County, Texas (the "Facility").
2. The Facility has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During an investigation conducted on March 6, 2008, through March 13, 2008, a TCEQ Abilene Regional Office investigator documented that Mr. Shipman failed to prevent the unauthorized discharge of approximately 350 gallons of septic tank waste. Specifically, due to mechanical problems, Mr. Shipman released the septic tank waste from the truck into a bar ditch along Farm to Market Road 3003 in Graham, Young County, Texas, to lessen the weight of the truck.
4. Mr. Shipman received notice of the violation on or about May 17, 2008.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Danny J. Shipman, Jr. dba Kim's Septic Service" (the "EDPRP") in the TCEQ Chief Clerk's office on October 22, 2008.
6. By letter dated October 22, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Shipman with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Shipman received notice of the EDPRP.
7. More than twenty days have elapsed since Mr. Shipman received notice of the EDPRP, provided by the Executive Director. Mr. Shipman failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Shipman is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Shipman failed to prevent the unauthorized discharge of approximately 350 gallons of septic tank waste in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 312.143.
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Shipman with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Mr. Shipman has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Shipman and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Shipman for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of one thousand five hundred thirty dollars (\$1,530.00) is justified by the facts recited in this Order and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Shipman is assessed an administrative penalty in the amount of one thousand five hundred thirty dollars (\$1,530.00) for violations of TEX. WATER CODE ch. 26 and rules of the TCEQ. The payment of this administrative penalty and Mr. Shipman's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within thirty days after the effective date of this Order and shall be sent with the notation "Re: Danny J. Shipman, Jr. dba Kim's Septic Service; Docket No. 2008-0912-SLG-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. Mr. Shipman shall undertake the following technical requirements:
  - a. Within thirty days after the effective date of this Order, Mr. Shipman shall develop and implement written procedures to prevent an unauthorized discharge in the event that the vehicle used by Mr. Shipman to transport sludge is damaged or otherwise prevented from transporting its contents to an authorized disposal site. Procedures shall include descriptions of how sludge will be contained, collected, and transferred to prevent harm to human health or the environment.

- b. Within forty five days after the effective date of this Order, Mr. Shipman shall submit written certification as described below and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Clifford Moore, Water Section Manager  
Texas Commission on Environmental Quality  
Abilene Regional Office  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Shipman. Mr. Shipman is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Shipman fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Shipman's failure to comply is not a violation of this Order. Mr.

Shipman shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Shipman shall notify the Executive Director within seven days after Mr. Shipman becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Shipman shall be made in writing to the Executive Director. Extensions are not effective until Mr. Shipman receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Shipman if the Executive Director determines that Mr. Shipman has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF STEPHANIE J. FRAZEE**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Stephanie J. Frazee. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Danny J. Shipman, Jr. dba Kim’s Septic Service” (the “EDPRP”) with the Office of the Chief Clerk on October 22, 2008.

I sent the EDPRP to Mr. Shipman at his last known address on October 22, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than twenty days have elapsed since Mr. Shipman received notice of the EDPRP. Mr. Shipman failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

  
\_\_\_\_\_  
Stephanie J. Frazee  
Attorney  
Texas Commission on Environmental Quality

**Affidavit of Stephanie J. Frazee**

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Before me, the undersigned authority, on this day personally appeared Stephanie J. Frazee, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 17<sup>th</sup> day of December, A.D., 2008.



Notary Signature

Notary Stamp

