

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0256-MWD-E TCEQ ID: RN101523264 CASE NO.: 35393**  
**RESPONDENT NAME: KEEPER MANAGEMENT, LLC**

<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 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> 6421 Hermann Road, Houston, Harris County</p> <p><b>TYPE OF OPERATION:</b> Domestic wastewater treatment system</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired April 20, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney: Mr. Barham Richard, Litigation Division, MC 175, (512) 239-0107  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  TCEQ Enforcement Coordinator: Mr. Samuel Short, Water Enforcement Section, MC 169, (512) 239-1203  TCEQ Regional Contact: Mr. Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3581  Respondent: Mr. Hoang Nguyen, Member, Keeper Management, LLC, P.O. Box 5281, Portland, Oregon, 97208  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 type="checkbox"/> Complaint  <input checked="" 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> None</p> <p><b>Date of Investigation Relating to this Case:</b> November 28, 2007</p> <p><b>Date of NOE Relating to this Case:</b> January 25, 2008</p> <p><b>Background Facts:</b> The EDRP was filed on June 17, 2008, and re-filed for service on February 6, 2009. Respondent received notice of the EDRP on February 16, 2009, as evidenced by the signature on the "green card". On September 30, 2008, Respondent signed an agreed order. Subsequently, an error was discovered and a revised agreed order was mailed to Respondent. After numerous contacts with Respondent and several requests to submit to the revised order, Respondent was informed that failure to submit the revised agreed order would result in the issuance of a default order. Respondent failed to return the signed revised agreed order and failed to file an answer.</p> <p><b>Current Compliance Status:</b> The Respondent's application for renewal, which was due June 4, 2007, has not yet been submitted.</p> <p><b>MWD:</b> Failed to maintain authorization for the discharge of wastewater [TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN CODE §§ 305.65 and 305.125(2)].</p>	<p><b>Total Assessed:</b> \$2,160</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid to General Revenue:</b> \$2,160</p> <p>Although this is a Default Order, Respondent remitted payment for the full amount of the administrative penalty.</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. Immediately, comply with the permit limits and conditions of expired TPDES Permit No. WQ0012626001 until such time that authorization to operate is obtained or until 180 days after the effective date of this Order, whichever is earlier;</li> <li>2. Within 30 days, submit an administratively complete TPDES permit application;</li> <li>3. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the TPDES permit application within 30 days after the date of such requests or by any other deadline specified in writing; and</li> <li>4. Within 180 days, submit written, notarized certification to demonstrate either that authorization to operate has been obtained or that operation has ceased.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

TCEQ

DATES	Assigned	28-Jan-2008	Screening	1-Feb-2008	EPA Due	
	PCW	28-Apr-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Keeper Management, LLC
Reg. Ent. Ref. No.	RN101523264
Facility/Site Region	12-Houston
Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	35393	No. of Violations	1	
Docket No.	2008-0256-MWD-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Andrew Hunt	
Multi-Media		EC's Team	Enforcement Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$2,000

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

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

**Compliance History** 8% Enhancement Subtotals 2, 3, & 7 \$160

Notes: An enhancement is recommended due to four unrelated written NOV's.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

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

**Total EB Amounts** \$121 0% Enhancement\* Subtotal 6 \$0  
 Approx. Cost of Compliance \$2,000 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$2,160

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$2,160

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$2,160

**DEFERRAL** 0% Reduction Adjustment

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

Notes

**PAYABLE PENALTY** \$2,160

Screening Date 1-Feb-2008

Docket No. 2008-0256-MWVD-E

PCW

Respondent Keeper Management, LLC

Policy Revision 2 (September 2002)

Case ID No. 35393

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN101523264

Media [Statute] Water Quality

Enf. Coordinator Andrew Hunt

**Compliance History Worksheet**

>> Compliance History Site Enhancement (Subtotal 2)

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

>> 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

An enhancement is recommended due to four unrelated written NOVs.

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

Screening Date 1-Feb-2008

Docket No. 2008-0256-MWD-E

PCW

Respondent Keeper Management, LLC

Policy Revision 2 (September 2002)

Case ID No. 35393

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN101523264

Media [Statute] Water Quality

Enf. Coordinator Andrew Hunt

Violation Number

Rule Cite(s) Tex. Water Code § 26.121(a) and 30 Tex. Admin. Code §§ 305.65 and 305.125(2)

Violation Description Failed to maintain authorization for the discharge of wastewater. Specifically, the Respondent did not renew Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012626001, and is continuing to discharge wastewater from the Facility without authorization.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events  Number of violation days

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

Violation Base Penalty

Two monthly events are recommended from the date the TPDES permit expired (December 1, 2007) to the screening date (February 1, 2008).

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:** Keeper Management, LLC  
**Case ID No.:** 35393  
**Reg. Ent. Reference No.:** RN101523264  
**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
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No commas or \$

### 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	\$2,000	1-Dec-2007	15-Feb-2009	1.2	\$121	n/a	\$121
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a new permit application to obtain authorization to discharge wastewater. Date required is the date the previous permit expired. Final date is the expected 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

\$2,000

**TOTAL**

\$121

# Compliance History

Customer/Respondent/Owner-Operator: CN603205238 Keeper Management, LLC Classification: AVERAGE Rating: 0.97  
Regulated Entity: RN101523264 HERMANN OAKS MOBILE HOME PARK Classification: AVERAGE Site Rating: 0.97  
ID Number(s): WASTEWATER PERMIT WQ0012626001  
WASTEWATER PERMIT TPDES0091847  
WASTEWATER PERMIT TX0091847  
WASTEWATER LICENSING LICENSE WQ0012626001  
Location: LOCATED AT 6421 HERMANN RD, APPROXIMATELY 1.5 MILES SOUTH OF GREENS BAYOU AND 1.0 MILE EAST OF U.S. HIGHWAY 59 IN HARRIS COUNTY, TX Rating Date: September 01 07  
Repeat Violator: NO  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: February 08, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: February 07, 2003 to February 07, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Andrew Hunt Phone: 512-239-1203

## 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? Yes
3. If Yes, who is the current owner? Keeper Management, LLC
4. If Yes, who was/were the prior owner(s)? Thomas Nelson Thurber
5. When did the change(s) in ownership occur? 12/7/2005

### 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	02/24/2003	(213679)
2	03/03/2003	(23707)
3	03/21/2003	(213681)
4	04/18/2003	(213685)
5	05/22/2003	(318812)
6	06/25/2003	(318814)
7	07/17/2003	(318816)
8	08/22/2003	(150920)
9	08/25/2003	(318817)
10	09/03/2003	(152914)
11	09/26/2003	(318818)
12	11/21/2003	(318819)
13	12/17/2003	(318820)
14	01/22/2004	(318821)
15	02/23/2004	(318809)
16	03/17/2004	(318810)
17	04/22/2004	(318811)
18	05/21/2004	(318813)

19 07/06/2004 (318815)  
 20 07/21/2004 (362030)  
 21 08/20/2004 (362031)  
 22 11/17/2004 (362032)  
 23 05/09/2005 (376078)  
 24 06/03/2005 (425213)  
 25 06/07/2005 (394766)  
 26 04/12/2006 (454161)  
 27 08/18/2006 (481195)  
 28 09/05/2006 (526565)  
 29 02/28/2007 (537879)  
 30 01/25/2008 (610555)

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

Date: 03/03/2003 (23707)  
 Self Report? NO Classification: Minor  
 Rqmt Prov: OP Operational Requirements No. 1  
 Description: Failure to properly operate and maintain the chlorine contact basin.  
 Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 317 317.3(a)  
 Description: Failure to secure the on-site lift station.  
 Self Report? NO Classification: Minor  
 Rqmt Prov: OP Operational Requirements No. 1  
 Description: Failure to operate and maintain the on-site lift station.  
 Date: 08/22/2003 (150920)  
 Self Report? NO Classification: Minor  
 Rqmt Prov: OP Operational Requirements No. 1  
 Description: Failure to operate and maintain the on-site lift station.  
 Date: 05/06/2005 (376078)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.126(a)  
 Rqmt Prov: PERMIT 12626-001  
 Description: Failure to initiate engineering and financial planning for the expansion of the WWTP.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)  
 30 TAC Chapter 305, SubChapter F 305.125(11)(C)  
 Description: Failure to provide the annual FY 2004 sludge report.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Rqmt Prov: PERMIT 12626-001  
 Description: Failure to comply with the permitted chlorine residual and dissolved oxygen (D.O.) limits.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to maintain process control records.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)  
 30 TAC Chapter 319, SubChapter A 319.7(c)  
 Rqmt Prov: PERMIT 12626-001  
 Description: Failure to maintain calibration and Quality Assurance/Quality Control (QA/QC) records on the pH, D.O., and chlorine field meters.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 Description: Failure to properly operate and maintain the wastewater treatment plant  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to ensure that the Discharge Monitoring Reports (DMRs) are signed by an authorized person.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to ensure an accurate flow measurement.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 319, SubChapter A 319.11(b)  
 Description: Failure to document proper sample preservation and storage procedures.

Date: 07/31/2006 (526565)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

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  
KEEPER MANAGEMENT, LLC;  
RN101523264

§  
§  
§  
§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2008-0256-MWD-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 Keeper Management, LLC ("Keeper").

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

**FINDINGS OF FACT**

1. Keeper owns and operates a domestic wastewater treatment system located at 6421 Hermann Road, Houston, Harris County, Texas (the "Facility").
2. Keeper has discharged waste from the Facility 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 November 28, 2007, a TCEQ Houston Regional Office investigator documented that Keeper failed to maintain authorization for the discharge of wastewater. Specifically, Keeper failed to timely renew TPDES Permit No. WQ0012626001 by June 4, 2007, and is continuing to discharge wastewater from the Facility without authorization.
4. Keeper received notice of the violation on or about January 25, 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 Keeper Management, LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on February 6, 2009.
6. By letter dated February 6, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Keeper with notice of the EDPRP. According to the return receipt "green card," Keeper received notice of the EDPRP on February 16, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Keeper received notice of the EDPRP, provided by the Executive Director. Keeper 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, Keeper 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, Keeper failed to maintain authorization for the discharge of wastewater, in violation of TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE §§ 305.65 and 305.125(2).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Keeper with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Keeper 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 Keeper 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 Keeper for violations of the Texas Water 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 two thousand one hundred sixty dollars (\$2,160.00) 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. Keeper is assessed an administrative penalty in the amount of two thousand one hundred sixty dollars (\$2,160.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Keeper'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 30 days after the effective date of this Order and shall be sent with the notation "Re: Keeper Management, LLC; Docket No. 2008-0256-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. Keeper shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Commission order, Keeper shall comply with the permit limits and conditions of expired TPDES Permit No. WQ0012626001 until such time that authorization to discharge is obtained or until 180 days after the effective date of this Commission Order, whichever is earlier;
  - b. Within 30 days after the effective date of this Commission Order, Keeper shall submit an administratively complete TPDES permit application for the Facility in accordance with 30 TEX. ADMIN CODE ch. 305 to:

Water Quality Applications Team  
Permits Administrative Review Section  
Registration, Review, and Reporting Division, MC 161  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- c. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and
- d. Within 180 days after the effective date of this Commission Order, Keeper shall submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.

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.”

Keeper shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Stephen Smith, Water Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1452

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Keeper. Keeper 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 Keeper 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, Keeper's failure to comply is not a violation of this Order. Keeper shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Keeper shall notify the Executive Director within seven days after Keeper 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 Keeper shall be made in writing to the Executive Director. Extensions are not effective until Keeper 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 Keeper if the Executive Director determines that Keeper 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 this Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Keeper Management, LLC  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF BARHAM A. RICHARD**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Barham A. Richard. 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, 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 Keeper Management, L.L.C.” (the “EDPRP”) was filed with the Office of the Chief Clerk on February 6, 2009.

The EDPRP was mailed to Keeper at its last known address on February 6, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Keeper received notice of the EDPRP on February 16, 2009, as evidenced by the signature on the card.

More than 20 days have elapsed since Keeper received notice of the EDPRP. Keeper failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Barham A. Richard, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 10th day of December, A.D., 2009.

  
Notary Signature