

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1309-PWS-E **TCEQ ID:** RN101244457 **CASE NO.:** 38145
RESPONDENT NAME: City of Kemp

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"/> IMMEDIATE 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 checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input 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>SITE WHERE VIOLATION(S) OCCURRED: City of Kemp, located on the north side of Cedar Creek Lake on Highway 175, Kaufman County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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 December 14, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable Matt Ganssle, Mayor, City of Kemp, P.O. Box 449, Kemp, Texas 75143 Mr. James Stroman, City Administrator, City of Kemp, P.O. Box 449, Kemp, Texas 75143 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: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 2, 2009</p> <p>Date of NOV/NOE Relating to this Case: August 5, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to inspect the Facility's ground and elevated storage tanks annually [30 TEX. ADMIN. CODE § 290.46(m)(1)].</p> <p>2) Failure to maintain and keep on file all records of the Facility's internal cross-connection and control program, including copies of all inspection and test reports [30 TEX. ADMIN. CODE § 290.44(h)(1)(B)(ii)].</p>	<p>Total Assessed: \$630</p> <p>Total Deferred: \$126 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$504</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input 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>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Conduct an annual inspection of all ground and elevated storage tanks at the Facility; and</p> <p>ii. Begin maintaining and keeping on file all records relating to the Facility's internal cross-connection and control program.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): PWS ID No. 1290004



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	3-Aug-2009	Screening	12-Aug-2009	EPA Due	
	PCW	13-Aug-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Kemp
Reg. Ent. Ref. No.	RN101244457
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38145	No. of Violations	2
Docket No.	2009-1309-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Yuliya Dunaway
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit	Minimum \$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$500
---	-------------------	-------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	26.0% Enhancement	Subtotals 2, 3, & 7	\$130
---------------------------	-------------------	--------------------------------	-------

Notes
The penalty enhancement is due to three Notices of violation for violations that are not the same as or similar to the violations in the current enforcement action, and one prior agreed final enforcement order containing a denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
--------------------	----	------------------	-------------------	-----

Notes
The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
--	-------------------	-----

Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts \$215
Approx. Cost of Compliance \$300
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$630
-----------------------------	-----------------------	-------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$630
-----------------------------	-------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$630
-----------------------------------	-------------------------------	-------

DEFERRAL	20.0% Reduction	Adjustment	-\$126
-----------------	-----------------	-------------------	--------

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

Notes
Deferral offered for expedited settlement.

PAYABLE PENALTY	\$504
------------------------	-------

Screening Date 12-Aug-2009

Docket No. 2009-1309-PWS-E

PCW

Respondent City of Kemp

Policy Revision 2 (September 2002)

Case ID No. 38145

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101244457

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

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	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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%
<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) 26%

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

N/A

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 penalty enhancement is due to three Notices of violation for violations that are not the same as or similar to the violations in the current enforcement action, and one prior agreed final enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 26%

Screening Date 12-Aug-2009	Docket No.: 2009-1309-PWS-E	PCW	
Respondent City of Kemp	<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 38145	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN101244457			
Media (Statute) Public Water Supply			
Enf. Coordinator Yullya Dunaway			
Violation Number <input type="text" value="1"/>			
Rule Cite(s)	30 Tex. Admin. Code § 290.46(m)(1)		
Violation Description	Failed to inspect the Facility's ground and elevated storage tanks annually. Specifically, at the time of the investigation, it was documented that the Facility's four storage tanks were not inspected in the 12 months preceding the July 2, 2009 investigation.		
Base Penalty		<input type="text" value="\$1,000"/>	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
Release	<input type="text"/>	<input type="text"/>	<input type="text"/>
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	x	<input type="text"/>
			Percent <input type="text" value="10%"/>
>> Programmatic Matrix			
Falsification			
Major Moderate Minor			
<input type="text"/> <input type="text"/> <input type="text"/>			
			Percent <input type="text" value="0%"/>
Matrix Notes	Failure to inspect the Facility's tanks could result in non-detection of a tank defect and a loss of tank integrity compromising the Facility's ability to supply a safe and adequate supply of water resulting in customers of the water supply being exposed to a significant amount of contaminants which would not exceed levels that are protective of human health.		
Adjustment			<input type="text" value="\$900"/>
			<input type="text" value="\$100"/>
Violation Events			
Number of Violation Events <input type="text" value="4"/>		Number of violation days <input type="text" value="365"/>	
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$400"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	x	
single event	<input type="text"/>		
Four annual events (one per tank) are recommended.			
Good Faith Efforts to Comply		0.0% Reduction	<input type="text" value="\$0"/>
		<small>Before NOV NOV to EDRP/Settlement Offer</small>	
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 for this violation.		
Violation Subtotal			<input type="text" value="\$400"/>
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<input type="text" value="\$210"/>	Violation Final Penalty Total	<input type="text" value="\$504"/>
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$504"/>

Economic Benefit Worksheet

Respondent City of Kemp
Case ID No. 38145
Reg. Ent. Reference No. RN101244457
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	0.00				\$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

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
Personnel					0.00	\$0	\$0
Inspection/Reporting/Sampling	\$200	2-Jul-2008	2-Jul-2009		1.00	\$10	\$210
Supplies/equipment					0.00	\$0	\$0
Financial Assurance [2]					0.00	\$0	\$0
ONE-TIME avoided costs [3]					0.00	\$0	\$0
Other (as needed)					0.00	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the amount to perform an annual ground storage tank inspection (\$50 per tank), calculated for 12 months preceding the July 2, 2009 investigation.

Approx. Cost of Compliance

\$200

TOTAL

\$210

Screening Date 12-Aug-2009	Docket No. 2009-1309-PWS-E	PCW
Respondent City of Kemp	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 38145	<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No. RN101244457		
Media [Statute] Public Water Supply		
Enf. Coordinator Yuliya Dunaway		
Violation Number 2		
Rule Cite(s)	30 Tex. Admin. Code § 290.44(h)(1)(B)(II)	
Violation Description	Failed to maintain and keep on file all records of the Facility's internal cross-connection and control program, including copies of all inspection and test reports. Specifically, on the date of the investigation, no copies of annual inspections on backflow prevention assemblies used for health hazard protection were made available.	
Base Penalty		\$1,000
>> Environmental, Property and Human Health Matrix		
OR	Harm	
	Major Moderate Minor	
Release	Actual	Potential
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
Percent		0%
>> Programmatic Matrix		
	Falsification	Major Moderate Minor
	<input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Percent		10%
Matrix Notes	100% of the rule requirement was not met.	
Adjustment		\$900
		\$100
Violation Events		
Number of Violation Events	1	36 Number of violation days
<i>mark only one with an x</i>	daily	<input type="checkbox"/>
	weekly	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input checked="" type="checkbox"/>
Violation Base Penalty		\$100
One single event is recommended.		
Good Faith Efforts to Comply		
0.0% Reduction		\$0
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	
Violation Subtotal		\$100
Economic Benefit (EB) for this violation		
Statutory Limit Test		
Estimated EB Amount	\$5	Violation Final Penalty Total \$126
		This violation Final Assessed Penalty (adjusted for limits) \$126

Economic Benefit Worksheet

Respondent: City of Kemp
Case ID No.: 38145
Reg. Ent. Reference No.: RN101244457
Media: Public Water Supply
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

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	\$100	2-Jul-2009	31-May-2010	0.91	\$5	n/a	\$5
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$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

The delayed cost includes the amount to create and begin maintaining a record keeping system for the Facility's cross-connection control program, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$5

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600681027	City of Kemp	Classification: AVERAGE	Rating: 2.31
Regulated Entity:	RN101244457	CITY OF KEMP	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1290004	
	WATER LICENSING	LICENSE	1290004	
Location:	N SIDE OF CEDAR CREEK LAKE ON HWY 175, KAUFMAN COUNTY, TX			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	August 05, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 05, 2004 to August 05, 2009			

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

Name: Yuliya Dunaway Phone: 210-403-4077

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

Components (Multimedia) for the Site :

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

Effective Date: 11/24/2005

ADMINORDER 2005-1135-PWS-E

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(5)
5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Failure to comply with the maximum contaminant level of 0.060 mg/L for haloacetic acids based on a running annual average. Specifically, the Facility's running annual average concentration of HAA5 was 0.068 mg/L during the third quarter of 2004.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Failure to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes. Specifically, the Facility's running annual average concentration of TTHM was 0.114 mg/L during the third quarter of 2004.

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	05/06/2005	(374656)
2	06/17/2005	(395350)
3	05/09/2006	(458986)
4	12/20/2006	(532267)
5	02/27/2007	(540547)
6	08/23/2007	(570238)
7	02/05/2008	(652078)
8	07/30/2009	(761324)

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

Date: 05/10/2006 (458986) CN600681027
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.39(j)(1)(A)
Description: Failure to notify the executive director prior to making any significant change to the system's production, treatment, storage, or distribution facilities.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(4)(A)
Description: Failure to insure that all backflow prevention assemblies which are installed to provide protection against health hazards are tested annually.

Date: 12/28/2006 (532267) CN600681027
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.39(j)(1)(A)
Description: Failure to notify the executive director prior to making any significant change to the system's production, treatment, storage, or distribution facilities.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(i)
Description: Failure to verify the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations, specifically the August 2006 - November 2006 calibration records were not available for review.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(iii)
Description: Failure to calibrate the continuous disinfectant residual analyzer at least once a month with a chlorine solutions of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop amperometric, spectrophotometric, or titration method.

Date: 02/05/2008 (652078) CN600681027
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(5)
Description: HAA5

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 KEMP
RN101244457**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1309-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Kemp ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. 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 a public water supply located on north side of Cedar Creek Lake on Highway 175, Kaufman County, Texas (the "Facility") that has approximately 750 service connections and serves at least 25 people per day for at least 60 days per year.
2. 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.
3. The City received notice of the violations alleged in Section II ("Allegations") on or about August 10, 2009.
4. 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.
5. An administrative penalty in the amount of Six Hundred Thirty Dollars (\$630) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Five Hundred Four Dollars (\$504) of the administrative penalty and One Hundred Twenty-Six Dollars (\$126) 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.
6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

7. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. 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.
9. 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.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have:

1. Failed to inspect the Facility's ground and elevated storage tanks annually, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(1), as documented during an investigation conducted on July 2, 2009.
2. Failed to maintain and keep on file all records of the Facility's internal cross-connection and control program, including copies of all inspection and test reports, in violation of 30 TEX. ADMIN. CODE § 290.44(h)(1)(B)(ii), as documented during an investigation conducted on July 2, 2009.

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 5 above. The payment 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 Kemp, Docket No. 2009-1309-PWS-E" to:

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

2. It is further ordered that the City shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order:
 - i. Conduct an annual inspection of all ground and elevated storage tanks at the Facility, as required by 30 TEX. ADMIN. CODE § 290.46; and
 - ii. Begin maintaining and keeping on file all records relating to the Facility's internal cross-connection and control program, as required by 30 TEX. ADMIN. CODE § 290.44.
- b. Within 45 days after the effective date of this Agreed Order, 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 fines 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

with a copy to:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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 Facility operations referenced in this Agreed Order.
4. 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.
5. 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.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

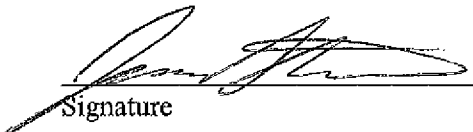
Date 11/14/2009

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature

Date 10-14-09

James Stroman

Name (Printed or typed)
Authorized Representative of
City of Kemp

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.

