

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2009-0964-MWD-E TCEQ ID: RN102218435 CASE NO.: 32700**

**RESPONDENT NAME: City of Kemp**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Kemp, located approximately 0.8 mile west-southwest of the intersection of State Route 274 and United States Route 175, approximately 1.5 miles southwest of Kemp, Kaufman County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment facility</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" 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 has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 19, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> 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  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> April 2, 2009</p> <p><b>Date of NOE Relating to this Case:</b> May 6, 2009</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>WATER</b></p> <p>Failure to comply with permitted effluent limits of total suspended solids, ammonia nitrogen, and carbonaceous biochemical oxygen demand [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010695001, and TCEQ Agreed Order Docket No. 2007-0256-MWD-E, Ordering Provision No. 3].</p>	<p><b>Total Assessed:</b> \$18,690</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$525 (remaining \$18,165 due in 35 monthly payments of \$519 each)</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>Findings Orders Justification:</b></p> <p>This case involves a violation of a prior Agreed Order. When the Respondent failed to comply with the prior Agreed Order, the Respondent demonstrated an indifference to legal duty.</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010695001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

Additional ID No(s): WQ0010695001

**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision October 30, 2008

**TCEQ**  
**DATES** Assigned  PCW  Screening  EPA Due

**RESPONDENT/FACILITY INFORMATION**

Respondent	City of Kemp		
Reg. Ent. Ref. No.	RN102218435		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

**CASE INFORMATION**

Enf./Case ID No.	<input type="text" value="32700"/>	No. of Violations	<input type="text" value="1"/>
Docket No.	<input type="text" value="2009-0964-MWD-E"/>	Order Type	<input type="text" value="Findings"/>
Media Program(s)	<input type="text" value="Water Quality"/>	Government/Non-Profit	<input type="text" value="Yes"/>
Multi-Media	<input type="text"/>	Enf. Coordinator	<input type="text" value="Lanae Foard"/>
		EC's Team	<input type="text" value="Enforcement Team 1"/>
Admin. Penalty \$ Limit Minimum	<input type="text" value="\$0"/>	Maximum	<input type="text" value="\$10,000"/>

**Penalty Calculation Section**

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

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

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

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

Notes

**Culpability**   Enhancement Subtotal 4

Notes

**Good Faith Effort to Comply Total Adjustments** Subtotal 5

**Economic Benefit**  Enhancement\* Subtotal 6

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

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  Reduction Adjustment

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

Notes

**PAYABLE PENALTY**

Screening Date 3-Jun-2009

Docket No. 2009-0964-MWD-E

PCW

Respondent City of Kemp

Policy Revision 2 (September 2002)

Case ID No. 32700

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102218435

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

### 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)	38	190%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 210%

>> 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 36 self-reported effluent violations, two NOV's with violations same or similar to those cited in this action, and one final agreed order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 210%

<b>Screening Date</b> 3-Jun-2009	<b>Docket No.</b> 2009-0964-MWD-E	<b>PCW</b>
<b>Respondent</b> City of Kemp		Policy Revision 2 (September 2002)
<b>Case ID No.</b> 32700		PCW Revision October 30, 2008
<b>Reg. Ent. Reference No.</b> RN102218435		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Lanae Foard		
<b>Violation Number</b> 1		
<b>Rule Cite(s)</b>	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010695001, and TCEQ Agreed Order Docket No. 2007-0256-MWD-E, Ordering Provision No. 3	
<b>Violation Description</b>	Failed to comply with permitted effluent limits, as documented in a record review conducted on April 2, 2009 and shown in the attached effluent violation table.	
	<b>Base Penalty</b>	\$10,000

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

<b>OR</b>	<b>Harm</b>				
		Major	Moderate		Minor
	<b>Release</b>				X
	<b>Actual</b>			<b>Percent</b> 10%	
	<b>Potential</b>				

**>> Programmatic Matrix**

		Major	Moderate	Minor	
<b>Falsification</b>					<b>Percent</b> 0%

**Matrix Notes**  
A simplified model was used to evaluate carbonaceous biochemical oxygen demand and ammonia nitrogen to determine whether the discharged amounts pollutants exceeded protective levels. Total suspended solids were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
single event		

**Violation Base Penalty** \$7,000

Seven quarterly events are recommended from the effective date of the order (9/21/2007) to the screening date (6/3/2009).

**Good Faith Efforts to Comply**

0.0% Reduction  
Before NOV    NOV to EDPRP/Settlement Offer

<b>Extraordinary</b>		
<b>Ordinary</b>		
<b>N/A</b>	X	(mark with x)

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$7,000

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$3,744

**Violation Final Penalty Total** \$18,690

**This violation Final Assessed Penalty (adjusted for limits)** \$18,690

## Economic Benefit Worksheet

**Respondent** City of Kemp  
**Case ID No.** 32700  
**Reg. Ent. Reference No.** RN102218435  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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				0.00	\$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)	\$30,000	21-Sep-2007	20-Mar-2010	2.50	\$3,744	n/a	\$3,744

Notes for DELAYED costs

Estimated cost to determine the cause of the effluent violations and to make necessary adjustments to the Facility  
 Date required is the effective date of the order. Final date is expected 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

\$30,000

TOTAL

\$3,744

**EFFLUENT VIOLATION TABLE**

City of Kemp

TPDES Permit No. WQ0010695001

Docket No. 2009-0964-MWD-E

Permitted Effluent Limits	Monitoring Period End Date												
	12/31/07	2/29/08	3/31/08	4/30/08	5/31/08	7/31/08	8/31/08	9/30/08	10/31/08	12/31/08	1/31/09	2/28/09	3/31/09
TSS daily avg. loading Limit = 15 lbs/day	c	c	c	45	c	c	17.4	c	c	c	c	c	c
TSS daily avg. conc. Limit = 5 mg/L	8.2	14.5	12.1	24.2	6	8.5	28	5.6	7.9	6.7	10.5	6.9	9.7
TSS single grab Limit = 30 mg/L	c	c	c	75	c	c	70	c	c	c	c	c	c
NH3-N daily avg. loading Limit = 5.8 lbs/day	c	c	c	c	c	c	c	c	10.68	c	c	c	c
NH3-N daily avg. conc. Limit = 2 mg/L	c	c	2.63	c	c	c	c	c	8.88	c	c	c	3.04
NH3-N single grab Limit = 15 mg/L	c	c	c	c	c	c	c	c	25.8	c	c	c	c
CBOD daily avg. loading Limit = 15 lbs/day	c	c	c	c	c	c	17.9	c	c	c	c	c	c
CBOD daily avg. conc. Limit = 5 mg/L	c	c	8.8	c	c	c	31	c	10.1	c	c	c	c
CBOD single grab Limit = 30 mg/L	c	c	c	c	c	c	113	c	c	c	c	c	c

TSS = total suspended solids

NH3-N = ammonia nitrogen

CBOD = carbonaceous biochemical oxygen demand

lbs/day = pounds per day

mg/L = milligrams per liter

avg. = average

conc. = concentration

max = maximum

c = compliant

min = minimum



# Compliance History Report

Customer/Respondent/Owner-Operator:	CN800881027	City of Kemp	Classification: AVERAGE	Rating: 2.31
Regulated Entity:	RN102218435	CITY OF KEMP	Classification: AVERAGE	Site Rating: 2.31

ID Number(s):	WASTEWATER	PERMIT	WQ0010695001
	WASTEWATER	PERMIT	TPDES0023396
	WASTEWATER	PERMIT	TX0023396
	WASTEWATER LICENSING	LICENSE	WQ0010695001

Location: Approximately 0.8 mile west-southwest of the intersection of State Route 274 and United States Route 175, approximately 1.5 miles southwest of Kemp, in Kaufman County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX  
 Date Compliance History Prepared: June 02, 2009  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: June 02, 2004 to June 02, 2009

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

Name: Lanae Foard Phone: 512 - 239 - 2554

### 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. Rating Date: 9/1/2008 Repeat Violator: NO

### 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:	09/21/2007	ADMINORDER 2007-0256-MWD-E
Classification:	Moderate	
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Rmt Prov:	EFFLUENT PERMIT	
Description:	Failure to comply with permit effluent limits.	

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	06/16/2004	(353725)
2	07/19/2004	(353726)
3	08/26/2004	(353727)
4	09/20/2004	(353728)
5	11/29/2004	(362760)
6	12/20/2004	(362761)
7	01/20/2005	(362762)
8	02/17/2005	(362758)
9	03/01/2005	(346607)
10	03/15/2005	(362759)
11	04/18/2005	(420568)
12	05/18/2005	(420569)
13	06/16/2005	(377095)
14	06/24/2005	(420570)
15	07/26/2005	(420571)
16	08/19/2005	(441586)
17	09/20/2005	(441587)
18	10/20/2005	(469956)
19	12/08/2005	(469957)
20	02/17/2006	(469954)
21	03/23/2006	(469955)
22	04/18/2006	(499138)
23	05/19/2006	(499139)

24	06/16/2006	(499140)
25	07/17/2006	(545663)
26	07/19/2006	(499141)
27	08/15/2006	(521181)
28	09/18/2006	(521182)
29	10/16/2006	(545684)
30	11/16/2006	(545685)
31	12/18/2006	(545686)
32	01/22/2007	(545687)
33	01/22/2007	(577418)
34	02/02/2007	(534910)
35	02/20/2007	(577413)
36	03/13/2007	(577414)
37	04/18/2007	(577415)
38	05/14/2007	(577416)
39	08/12/2007	(577417)
40	07/20/2007	(602189)
41	09/20/2007	(602190)
42	09/21/2007	(602191)
43	10/11/2007	(602192)
44	10/16/2007	(597991)
45	11/09/2007	(620340)
46	11/30/2007	(609630)
47	12/11/2007	(620341)
48	01/11/2008	(620342)
49	02/14/2008	(672666)
50	03/07/2008	(672667)
51	04/15/2008	(646239)
52	04/16/2008	(672668)
53	06/16/2008	(690661)
54	07/16/2008	(690660)
55	07/16/2008	(690662)
56	08/14/2008	(711507)
57	09/15/2008	(711508)
58	10/09/2008	(711509)
59	12/01/2008	(728043)
60	12/12/2008	(728044)
61	01/13/2009	(728045)
62	05/08/2009	(741398)

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

Date: 02/28/2005 (382759) CN600681027

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

Date: 03/04/2005 (346607)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to produce effluent quality within permit parameters for total suspended solids.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.4

Description: A review of laboratory analysis revealed that a mixture of CBOD and BOD testing has been performed when all testing should have been for BOD.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)(B)

30 TAC Chapter 305, SubChapter F 305.125(1)(C)

Description: Failure to submit the Annual Sludge Report to the DFW Region Office per permit requirement Section III, Requirements Applying to all Sewage Sludge Disposed in a Municipal Solid Waste Landfill, Item G, Reporting Requirements. A copy of the ASR was requested during the exit interview, see attached form, but only the TCL

Date: 03/31/2005 (420568) CN600681027

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

Date: 05/31/2005 (420570) CN600681027

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

Date:	06/30/2005	(420571)	CN600681027	
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			
Date:	07/31/2005	(441586)	CN600681027	
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			
Date:	09/30/2005	(469956)	CN600681027	
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			
Date:	10/31/2005	(469957)	CN600681027	
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			
Date:	12/31/2005	(545687)	CN600681027	
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			
Date:	01/31/2006	(469954)	CN600681027	
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			
Date:	02/28/2006	(469955)	CN600681027	
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			
Date:	03/31/2006	(499138)	CN600681027	
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			
Date:	04/30/2006	(499139)	CN600681027	
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			
Date:	05/31/2006	(499140)	CN600681027	
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			
Date:	08/31/2006	(521182)	CN600681027	
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			
Date:	09/30/2006	(545684)	CN600681027	
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			
Date:	10/31/2006	(545685)	CN600681027	
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			
Date:	11/30/2006	(545686)	CN600681027	
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			
Date:	12/31/2006	(577416)	CN600681027	
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			
Date:	01/31/2007	(577413)	CN600681027	

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		
Date:	02/28/2007	{577414}	CN600681027
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		
Date:	03/31/2007	{577415}	CN600681027
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		
Date:	06/30/2007	{602189}	CN600681027
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	09/31/2007	{602191}	CN600681027
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	11/30/2007	{609630}	
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) WQ0010695-001 PERMIT		
Description:	Failure to comply with the minimum chlorine limit of 1.0 mg/L.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) WQ0010695-001 PERMIT		
Description:	Failure to comply with carbonaceous biochemical oxygen demand (CBOD), total suspended solids (TSS), ammonia nitrogen (NH3-N), pH, dissolved oxygen (DO), and flow.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to submit noncompliance notifications as required by the permit.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 317 317.4(a)(8) 30 TAC Chapter 317 317.7(l)		
Description:	Failure to install an RPZ backflow prevention device or an air gap installed on the main potable line to the WWTP.		
Date:	12/31/2007	{620342}	CN600681027
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	02/29/2008	{672667}	CN600681027
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	03/31/2008	{672668}	CN600681027
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	04/30/2008	{690660}	CN600681027
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	05/31/2008	{690661}	CN600681027
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	07/31/2008	{711507}	CN600681027
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	08/31/2008	{711508}	CN600681027
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		

Description:	30 TAC Chapter 305, SubChapter F 305.125(1) Failure to meet the limit for one or more permit parameter		
Date:	09/30/2008	(711509)	CN600681027
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	10/31/2008	(728043)	CN600681027
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	12/31/2008	(728045)	CN600681027
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	01/31/2009		CN600681027
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	02/28/2009		CN600681027
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	03/31/2009		CN600681027
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF KEMP  
RN102218435**

**§       BEFORE THE  
§  
§       TEXAS COMMISSION ON  
§  
§       ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-0964-MWD-E**

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

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

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

### **I. FINDINGS OF FACT**

1. The City owns and operates a wastewater treatment facility located approximately 0.8 mile west-southwest of the intersection of State Route 274 and United States Route 175, approximately 1.5 miles southwest of Kemp, in Kaufman County, Texas (the "Facility").

2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on April 2, 2009, TCEQ staff documented that the City exceeded its permit effluent limits during the review period of October 2007 through March 2009, as depicted in the table below:

EFFLUENT VIOLATION TABLE													
Permitted Effluent Limits	Monitoring Period End Date												
	12/31/07	2/29/08	3/31/08	4/30/08	5/31/08	7/31/08	8/31/08	9/30/08	10/31/08	12/31/08	1/31/09	2/28/09	3/31/09
TSS daily avg. loading Limit = 15 lbs/day	c	c	c	45	c	c	17.4	c	c	c	c	c	c
TSS daily avg. conc. Limit = 5 mg/L	8.2	14.5	12.1	24.2	6	8.5	28	5.6	7.9	6.7	10.5	6.9	9.7
TSS single grab Limit = 30 mg/L	c	c	c	75	c	c	70	c	c	c	c	c	c
NH3-N daily avg. loading Limit = 5.8 lbs/day	c	c	c	c	c	c	c	c	10.68	c	c	c	c
NH3-N daily avg. conc. Limit = 2 mg/L	c	c	2.63	c	c	c	c	c	8.88	c	c	c	3.04
NH3-N single grab Limit = 15 mg/L	c	c	c	c	c	c	c	c	25.8	c	c	c	c
CBOD daily avg. loading Limit = 15 lbs/day	c	c	c	c	c	c	17.9	c	c	c	c	c	c
CBOD daily avg. conc. Limit = 5 mg/L	c	c	8.8	c	c	c	31	c	10.1	c	c	c	c
CBOD single grab Limit = 30 mg/L	c	c	c	c	c	c	113	c	c	c	c	c	c

TSS = total suspended solids  
NH3-N = ammonia nitrogen  
CBOD = carbonaceous biochemical oxygen demand  
lbs/day = pounds per day  
mg/L = milligrams per liter

avg. = average  
conc. = concentration  
max = maximum  
c= compliant  
min = minimum

4. The City received notice of the violations on May 11, 2009.

## II. CONCLUSIONS OF LAW

1. The City 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 Findings of Fact No. 3, the City failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010695001, and TCEQ Agreed Order Docket No. 2007-0256-MWD-E, Ordering Provision No. 3.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City 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.
4. An administrative penalty in the amount of Eighteen Thousand Six Hundred Ninety Dollars (\$18,690) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The City has paid Five Hundred Twenty-Five Dollars (\$525) of the administrative penalty. The remaining amount of Eighteen Thousand One Hundred Sixty-Five Dollars (\$18,165) of the administrative penalty shall be payable in 35 monthly payments of Five Hundred Nineteen Dollars (\$519) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the City fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the City to meet the payment schedule of this Agreed Order constitutes the failure by the City to timely and satisfactorily comply with all the terms of this Agreed Order.

## III. ORDERING PROVISIONS

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

1. The City is assessed an administrative penalty in the amount of Eighteen Thousand Six Hundred Ninety Dollars (\$18,690) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that 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. 2009-0964-MWD-E" to:

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

2. The City shall, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010695001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. 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. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes

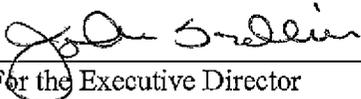
aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

  
\_\_\_\_\_  
For the Executive Director

3/23/2010  
Date

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

I understand that by entering into this Agreed Order, the City of Kemp waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

2/15/09  
Date

MAYOR GANSSLE  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Kemp

MAYOR  
\_\_\_\_\_  
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.