

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0553-PWS-E TCEQ ID: RN105452650 CASE NO.: 35620

RESPONDENT NAME: KENNETH POPPE AND GLORIA POPPE DBA POPPE'S PUB AND GRUB

ORDER TYPE:		
<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	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

SITE WHERE VIOLATION(S) OCCURRED: 13176 Farm-to-Market Road 236, Victoria, Victoria County

TYPE OF OPERATION: restaurant with a public water supply

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired February 23, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Tel Croston, Water Enforcement Section, MC 169, (512) 239-5717

TCEQ Regional Contact: Mr. David Kennebeck, Corpus Christi Regional Office, MC R-14, (361) 825-3111

Respondent(s): Mr. Kenneth Poppe and Ms. Gloria Poppe, Owners, Poppe's Pub & Grub, 13176 FM 236, Victoria, Texas 77905

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: N/A</p> <p>Date of Investigation Relating to this Case: January 23, 2008</p> <p>Date of NOE Relating to this Case: February 25, 2008</p> <p>Background Facts: The EDPRP was filed August 28, 2008, and mailed to the Respondents via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondents received notice of the EDPRP on September 2, 2008. The Respondents failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>PWS:</p> <p>1. Failed to provide written notification to the Commission of the startup of a new public water supply system or reactivation of an existing public water supply system [30 TEX. ADMIN. CODE § 290.39(m)].</p> <p>2. Failed to provide disinfection facilities for all groundwater supplies for the purpose of microbiological control and distribution protection [30 TEX. ADMIN. CODE § 290.42(b)(1) and (e)].</p>	<p>Total Assessed: \$850</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$850</p> <p>This is a Default Order. The Respondents have not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</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 Respondent shall undertake the following corrective measures:</p> <p>1. Within 10 days, submit written notification to the Commission of the start-up of a new public water system, including as-built plans, specifications, and engineering reports for the Facility.</p> <p>2. Within 30 days:</p> <p>a. Submit written certification to demonstrate compliance with Ordering Provision No. 1; and</p> <p>b. Install and operate facilities to maintain an adequate disinfectant residual throughout the distribution system under all conditions and provide equipment for monitoring the concentration of the disinfectant.</p> <p>3. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision No. 2.b.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	2-Mar-2008	Screening	26-Mar-2008	EPA Due	
	PCW	8-Jul-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Kenneth Poppe and Gloria Poppe dba Poppe's Pub and Grub
Reg. Ent. Ref. No.	RN105452650
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35620	No. of Violations	2
Docket No.	2008-0553-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Tel Croston
Multi-Media		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	\$850
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes	No change due to no previous compliance history.
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Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents do not meet the culpability criteria.
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Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)
Notes	The Respondents do not meet the good faith criteria.	

	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$154	<i>*Capped at the Total EB \$ Amount</i>
Approx. Cost of Compliance	\$3,200	

SUM OF SUBTOTAL:	Final Subtotal	\$850
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$850
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$850
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DEFERRAL		Reduction	Adjustment	
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral because this is not an expedited case.
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PAYABLE PENALTY	\$850
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Screening Date	26-Mar-2008	Docket No.	2008-0553-PWS-E	PCW
Respondent	Kenneth Poppe and Gloria Poppe dba Poppe's Pub and			Policy Revision 2 (September 2002)
Case ID No.	35620			PCW Revision February 29, 2008
Reg. Ent. Reference No.	RN105452650			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Tel Croston			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A **Adjustment Percentage (Subtotal 3)** 0%

>> Compliance History Person Classification (Subtotal 7)

N/A **Adjustment Percentage (Subtotal 7)** 0%

>> Compliance History Summary

Compliance History Notes	No change due to no previous compliance history.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 26-Mar-2008	Docket No. 2008-0553-PWS-E	PCW			
Respondent Kenneth Poppe and Gloria Poppe dba Poppe's Pub and Grub	<i>Policy Revision 2 (September 2002)</i>				
Case ID No. 35620	<i>PCW Revision February 29, 2008</i>				
Reg. Ent. Reference No. RN105452650					
Media [Statute] Public Water Supply					
Enf. Coordinator Tel Croston					
Violation Number <input type="text" value="1"/>					
Rule Cite(s)	30 Tex. Admin. Code § 290.39(m)				
Violation Description	Failed to provide written notification to the Commission of the startup of a new public water system. Specifically, at the time of the investigation, it was documented that the Respondents are operating a public water system with the water supplied to a restaurant serving approximately 100 individuals a day.				
Base Penalty		<input type="text" value="\$1,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			
		Major Moderate Minor			
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>
Matrix Notes	Failure to comply with 100% of the rule requirement.				
Adjustment <input type="text" value="\$900"/>					
<input type="text" value="\$100"/>					
Violation Events					
Number of Violation Events <input type="text" value="1"/>		Number of violation days <input type="text" value="61"/>			
<i>mark only one with an x</i>	daily	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
single event	<input checked="" type="text" value="x"/>			Violation Base Penalty <input type="text" value="\$100"/>	
One single event is recommended.					
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$9"/>		Violation Final Penalty Total <input type="text" value="\$100"/>			
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$100"/>	

Economic Benefit Worksheet

Respondent: Kenneth Poppe and Gloria Poppe dba Poppe's Pub and Grub
Case ID No.: 35620
Reg. Ent. Reference No.: RN105452650
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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$200	23-Jan-2008	1-Sep-2008	0.6	\$0	\$8	\$9
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				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs Estimated expense to submit notification to the Commission of the start-up of a new water system, 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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$200	TOTAL	\$9
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Screening Date 26-Mar-2008 **Docket No.** 2008-0553-PWS-E **PCW**
Respondent Kenneth Poppe and Gloria Poppe dba Poppe's Pub and Grub *Policy Revision 2 (September 2002)*
Case ID No. 35620 *PCW Revision February 29, 2008*
Reg. Ent. Reference No. RN105452650
Media [Statute] Public Water Supply
Enf. Coordinator Tel Croston

Violation Number
Rule Cite(s)
Violation Description

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" value="25%"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

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="checkbox"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

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: Kenneth Poppe and Gloria Poppe dba Poppe's Pub and Grub
Case ID No.: 35620
Reg. Ent. Reference No.: RN105452650
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	\$3,000	23-Jan-2008	1-Oct-2008	0.7	\$7	\$138	\$145
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				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to select and install disinfection equipment so that continuous and effective disinfection can be secured under all conditions, 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				0.0	\$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	\$3,000	TOTAL	\$145
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Compliance History

Customer/Respondent/Owner-Operator: CN603319401 POPPE, KENNETH Classification: Rating:
Regulated Entity: RN105452650 POPPE'S PUB & GRUB Classification: Site Rating:
ID Number(s):
Location: 13176 FM 236, VICTORIA COUNTY, TX, 77905
TCEQ Region: REGION 14 - CORPUS CHRISTI
Date Compliance History Prepared: March 24, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 24, 2003 to March 24, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Tel Croston Phone: 239-5717

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 02/25/2008 (619123)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

Compliance History

Customer/Respondent/Owner-Operator: CN603319419 POPPE, GLORIA Classification: Rating:
Regulated Entity: RN105452650 POPPE'S PUB & GRUB Classification: Site Rating:
ID Number(s):
Location: 13176 FM 236, VICTORIA COUNTY, TX, 77905
TCEQ Region: REGION 14 - CORPUS CHRISTI
Date Compliance History Prepared: March 24, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 24, 2003 to March 24, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Tel Croston Phone: 239-5717

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 02/25/2008 (619123)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KENNETH POPPE AND GLORIA
POPPE DBA POPPE'S PUB &
GRUB; RN105452650

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§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2008-0553-PWS-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. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondents made the subject of this Order are Kenneth and Gloria Poppe dba Poppe's Pub & Grub ("Mr. and Mrs. Poppe").

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

FINDINGS OF FACT

1. Mr. and Mrs. Poppe own and operate a restaurant with a public water supply located at 13176 Farm-to-Market Road 236, Victoria, Victoria County, Texas (the "Facility").
2. The Facility has one service connection and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(63).
3. During an inspection on January 23, 2008, a TCEQ Corpus Christi Regional Office investigator documented that Mr. and Mrs. Poppe:
 - a. Failed to provide written notification to the Commission of the startup of a new public water supply system or reactivation of an existing public water supply system; and
 - b. Failed to provide disinfection facilities for all groundwater supplies for the purpose of microbiological control and distribution protection.
4. Mr. and Mrs. Poppe received notice of the violations on or about March 1, 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 Kenneth Poppe and Gloria Poppe dba Poppe's Pub & Grub" (the "EDPRP") in the TCEQ Chief Clerk's office on August 28, 2008.
6. By letter dated August 28, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. and Mrs. Poppe with notice of the EDPRP. According to the return receipt "green card," Mr. and Mrs. Poppe received notice of the EDPRP on September 2, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. and Mrs. Poppe received notice of the EDPRP, provided by the Executive Director. Mr. and Mrs. Poppe failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. and Mrs. Poppe are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. and Mrs. Poppe failed to provide written notification to the Commission of the startup of a new public water supply system or reactivation of an existing public water supply system in violation of 30 TEX. ADMIN. CODE § 290.39(m).
3. As evidenced by Finding of Fact No. 3.b., Mr. and Mrs. Poppe failed to provide disinfection facilities for all groundwater supplies for the purpose of microbiological control and distribution protection in violation of 30 TEX. ADMIN. CODE § 290.42(b)(1) and (e).
4. As evidenced by Finding of Fact Nos. 5 & 6, the Executive Director has timely served Mr. and Mrs. Poppe with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Mr. and Mrs. Poppe have failed to file a timely answer to the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. and Mrs. Poppe and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 the Commission has the authority to assess an administrative penalty against Mr. and Mrs. Poppe 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.
7. An administrative penalty in the amount of eight hundred fifty dollars (\$850.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b).
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. and Mrs. Poppe are assessed an administrative penalty jointly and severally in the amount of eight hundred fifty dollars (\$850.00) for violations of TEX. HEALTH & SAFETY CODE ch. 341 and rules of the TCEQ. The payment of this administrative penalty and Mr. and Mrs. Poppe'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: Kenneth Poppe and Gloria Poppe dba Poppe's Pub & Grub; Docket No. 2008-0553-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. Mr. and Mrs. Poppe shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Order, Mr. and Mrs. Poppe shall submit written notification to the Commission of the startup of a new public water system, including as-built plans, specifications, and engineering reports for the Facility, in

accordance with 30 TEX. ADMIN. CODE § 290.39. The startup notification, plans, and reports shall be submitted to:

Utility Creation and Plan Review Team
Water Supply Division, MC 153
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Order, Mr. and Mrs. Poppe shall:
 - i. Submit written certification as described in Ordering Provision No. 2.d. below, to demonstrate compliance with Ordering Provision No. 2.a.; and
 - ii. Install and operate facilities to maintain an adequate disinfectant residual throughout the distribution system under all conditions and provide equipment for monitoring the concentration of the disinfectant, as required by 30 TEX. ADMIN. CODE § 290.42.
- c. Within 45 days after the effective date of this Order, Mr. and Mrs. Poppe shall submit written certification as described in Ordering Provision No. 2.d. to demonstrate compliance with Ordering Provision No. 2.b.ii.
- d. The certifications required by Ordering Provisions Nos. 2.b.i. and 2.c. shall include detailed supporting documentation including receipts and/or other records to demonstrate compliance, be notarized by a State of Texas Public Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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

and

Water Section Manager
Texas Commission on Environmental Quality
Corpus Christi Regional Office
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. and Mrs. Poppe. Mr. and Mrs. Poppe are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. and Mrs. Poppe shall be made in writing to the Executive Director. Extensions are not effective until Mr. and Mrs. Poppe receive 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 Mr. and Mrs. Poppe if the Executive Director determines that Mr. and Mrs. Poppe have not complied with one or more of the terms or conditions in this Order.
7. 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.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Kenneth Poppe and Gloria Poppe dba Poppe's Pub & Grub
Docket No. 2008-0553-PWS-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF REBECCA M. COMBS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Rebecca M. Combs. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the 'Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Kenneth Poppe and Gloria Poppe dba Poppe's Pub & Grub' (the 'EDPRP') with the Office of the Chief Clerk on August 28, 2008.

I sent the EDPRP to Mr. and Mrs. Poppe at their last known address on August 28, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt 'green card,' Mr. and Mrs. Poppe received notice of the EDPRP on September 2, 2008, as evidenced by the signature on the card.

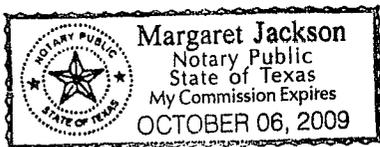
More than 20 days have elapsed since Mr. and Mrs. Poppe received notice of the EDPRP. Mr. and Mrs. Poppe failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."



Rebecca M. Combs
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 6 day of January, 2009.





Notary Stamp