

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 21, 2011

Ms. Gloria Ann Poppe, Co-Owner
Mr. Kenneth John Poppe, Co-Owner
Poppes Pub & Grub
553 Skyline
Victoria, Texas 77905-2514

Re: TCEQ Enforcement Action
Gloria Ann Poppe DBA Poppes Pub & Grub and Kenneth John Poppe DBA Poppes
Pub & Grub
Docket No. 2010-0768-PWS-E

Dear Mr. & Mrs. Poppe:

Enclosed for your records, are copies of documents which were filed in the Chief Clerk's Office of the Texas Commission on Environmental Quality (TCEQ) so that the above-referenced matter may be included on the agenda of items to be considered for approval by the commission at a public meeting scheduled for **February 9, 2011, at 9:30 a.m.** The meeting will be held at the TCEQ Park 35 Campus, located at 12118 North I-35, in Building E, Room 201S, in Austin, Texas. If you have any questions you may contact me at the TCEQ Litigation Division at (512) 239-3400 or my e-mail address listed below.

Sincerely,

/s/

Tammy L. Mitchell
Attorney
Litigation Division
Tammy.Mitchell@tceq.texas.gov

Enclosures

cc: Epifanio Villarreal, Water Enforcement Section
Elston Johnson, Public Water Supply Division
Lena Roberts, Litigation Division

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-0768-PWS-E

RN105452650

CASE NO. 39674

RESPONDENT NAME: GLORIA ANN POPPE DBA POPPES PUB & GRUB AND KENNETH JOHN POPPE DBA POPPES PUB & GRUB

ORDER TYPE:		
<input type="checkbox"/> 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 FM 236, Victoria, Victoria County

TYPE OF OPERATION: Restaurant with a public water system

SMALL BUSINESS: Yes No N/A

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired November 22, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Tammy L. Mitchell, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Epifanio Villarreal, Water Enforcement Section, MC R-14, (361) 825-3425

TCEQ Regional Contact: Elston Johnston, Public Drinking Water Section, MC 155, (512) 239-6266

Respondent: Gloria Ann Poppe and Kenneth John Poppe, 553 Skyline, Victoria, Texas 77905-2514

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

RESPONDENT NAME: GLORIA ANN POPPE DBA POPPES PUB & GRUB Page 2 of 3
AND KENNETH JOHN POPPE DBA POPPES PUB & GRUB
DOCKET NO. 2010-0768-PWS-E

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaint(s): N/A</p> <p>Date(s) of Investigation: April 5, 2010</p> <p>Date(s) of NOE(s): May 7, 2010</p> <p>Background Facts: The EDRP was filed on August 5, 2010 and mailed to Respondents via certified mail, return receipt requested, and via first class mail, postage prepaid. The United Postal Service returned the EDRP sent by certified mail and first class mail as "refused." Respondents failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondents no longer operate the Facility as of May 26, 2010.</p> <p>PWS:</p> <ol style="list-style-type: none"> Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the months of November 2008, December 2008, January 2009, and June 2009, and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform positive sample for November 2008, December 2008, January 2009, and June 2009 [30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B)]. Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform during the month of June 2009, and failed to provide public notice of the exceedence for June 2009 [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2) and TEX. HEALTH & SAFETY CODE § 341.031(a)]. Failed to collect routine distribution water samples for coliform analysis for the months of June 2008, July 2008, and February 2010, and failed to provide public notice of the failure to sample for the months of June 2008 and July 2008 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d)]. 	<p>Total Assessed: \$6,643</p> <p>Total Deferred: \$0</p> <p style="padding-left: 20px;"><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$6,643</p> <p>This is a Default Order. Respondents have not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order.</p> <p>Compliance History Classifications: <i>Person/CN</i> (Both Respondents) – N/A <i>Site/RN</i> – N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken: The Executive Director recognizes that Respondents no longer operate the Facility as of May 26, 2010.</p>

RESPONDENT NAME: GLORIA ANN POPPE DBA POPPES PUB & GRUB Page 3 of 3
AND KENNETH JOHN POPPE DBA POPPES PUB & GRUB
DOCKET NO. 2010-0768-PWS-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to collect at least five distribution coliform samples the month following a total coliform positive sample result, and failed to provide public notification of the failure to collect five distribution samples the months of September 2008, December 2008, January 2009, February 2009, and July 2009 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)].</p>		



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	10-May-2010	Screening	11-May-2010	EPA Due	1-Oct-2009
	PCW	11-May-2010				

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

CASE INFORMATION			
Enf./Case ID No.	39674	No. of Violations	4
Docket No.	2010-0768-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Epifanio Villarreal
		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	\$3,250
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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	65.0% Enhancement	Subtotals 2, 3, & 7	\$2,112
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Notes

Enhancement is due to eight Notices of Violation ("NOVs") that contain violations that are the same or similar to those in the current enforcement action and one prior default enforcement order without a denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes

The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,281	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,185	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,362
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OTHER FACTORS AS JUSTICE MAY REQUIRE	23.9%	Adjustment	\$1,281
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Enhancement recommended to recover avoided costs of compliance.

Final Penalty Amount	\$6,643
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,643
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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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 is recommended for Findings Orders.

PAYABLE PENALTY	\$6,643
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Screening Date 11-May-2010

Docket No. 2010-0768-PWS-E

PCW

Respondent Gloria Ann Poppe and Kenneth John Poppe dba Poppes

Policy Revision 2 (September 2002)

Case ID No. 39674

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105452650

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

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>)	8	40%
	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	1	25%
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) 65%

>> 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

Enhancement is due to eight Notices of Violation ("NOVs") that contain violations that are the same or similar to those in the current enforcement action and one prior default enforcement order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 65%

Screening Date	11-May-2010	Docket No.	2010-0768-PWS-E	PCW
Respondent	Gloria Ann Poppe and Kenneth John Poppe dba Poppes Pub & Gr			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39674			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN105452650			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Epifanio Villarreal			
Violation Number	1			
Rule Cite(s)	30 Tex. Admin. Code §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B)			
Violation Description	Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the months of November 2008, December 2008, January 2009, and June 2009 and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform positive sample for November 2008, December 2008, January 2009, and June 2009.			
Base Penalty	\$1,000			

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential	x		
				Percent 25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%
Matrix Notes	Failure to collect coliform monitoring samples could expose consumers to a significant amount of undetected contaminants which would exceed levels protective of human health.				
					Adjustment \$750

\$250

Violation Events

Number of Violation Events	4	122	Number of violation days
<i>mark only one with an x</i>	daily		
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		
			Violation Base Penalty \$1,000
Four monthly events are recommended for the months in which no repeat samples were collected.			

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)
Notes	The Respondents do not meet the good faith criteria for this violation.	
		Violation Subtotal \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount	\$453	Violation Final Penalty Total	\$2,044
This violation Final Assessed Penalty (adjusted for limits)		\$2,044	

Economic Benefit Worksheet

Respondent Gloria Ann Poppe and Kenneth John Poppe dba Poppes Pub & Grub
Case ID No. 39674
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

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)

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]	\$400	1-Nov-2008	30-Jun-2009	1.58	\$32	\$400	\$432
Other (as needed)	\$20	1-Mar-2009	1-Oct-2009	1.50	\$2	\$20	\$22

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of 16 repeat samples (\$25 per sample per month) and provide public notice for the failure to collect the samples (\$5 per notice), calculated for the months in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance

\$420

TOTAL

\$453

Screening Date 11-May-2010 **Docket No.** 2010-0768-PWS-E **PCW**
Respondent Gloria Ann Poppe and Kenneth John Poppe dba Poppes Pub & Grut *Policy Revision 2 (September 2002)*
Case ID No. 39674 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105452650
Media [Statute] Public Water Supply
Enf. Coordinator Epifanio Villarreal

Violation Number
Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(b)(2) and Tex. Health & Safety Code § 341.031(a)
Violation Description Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform during the month of June 2009 and failed to provide public notice of the exceedance for June 2009.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text" value="25%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> 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 The presence of coliform bacteria is an indication that the water is contaminated with significant amounts of contaminants that do not exceed levels that are protective of human health.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<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

One monthly event is recommended for the month in which the exceedance occurred.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal

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 Gloria Ann Poppe and Kenneth John Poppe dba Poppes Pub & Grub
Case ID No. 39674
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				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)

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]	\$100	1-Jun-2009	30-Jun-2009	0.00	\$0	\$100	\$100
Other (as needed)	\$5	1-Aug-2009	31-Aug-2009	1.00	\$0	\$5	\$5

Notes for AVOIDED costs

The avoided costs include the estimated amount for additional oversight to properly treat the water to prevent the presence of coliform and to provide public notice, calculated for the month in which the exceedance occurred and public notice was required.

Approx. Cost of Compliance

\$105

TOTAL

\$105

Screening Date	11-May-2010	Docket No.	2010-0768-PWS-E	PCW
Respondent	Gloria Ann Poppe and Kenneth John Poppe dba Poppes Pub & Grut			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39674			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN105452650			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Epifanio Villarreal			
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and Tex. Health and Safety Code § 341.033(d)			
Violation Description	Failed to collect routine distribution water samples for coliform analysis for the months of June 2008, July 2008, and February 2010 and failed to provide public notice of the failure to sample for the months of June 2008 and July 2008.			
	Base Penalty	\$1,000		

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential	x		
				Percent 25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%
Matrix Notes	Failure to collect coliform monitoring samples could expose consumers to a significant amount of undetected contaminants which would exceed levels protective of human health.				
					Adjustment \$750

\$250

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Three monthly events are recommended, calculated for the months in which no routine samples were collected.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)
Notes	The Respondents do not meet the good faith criteria for this violation.	

Violation Subtotal

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 Gloria Ann Poppe and Kenneth John Poppe dba Poppes Pub & Grub
Case ID No. 39674
Reg. Ent. Reference No. RN105452650
Media Public Water Supply
Violation No. 3

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				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)

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]	\$75	1-Jun-2008	28-Feb-2010	2.66	\$10	\$75	\$85
Other (as needed)	\$10	1-Oct-2008	1-Nov-2008	1.00	\$1	\$10	\$11

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of three routine samples (\$25 per sample) and provide public notice for the failure to collect the samples (\$5 per notice), calculated for the months in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance \$85

TOTAL \$95

Screening Date 11-May-2010 **Docket No.** 2010-0768-PWS-E **PCW**
Respondent Gloria Ann Poppe and Kenneth John Poppe dba Poppes Pub & Grut *Policy Revision 2 (September 2002)*
Case ID No. 39674 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105452650
Media [Statute] Public Water Supply
Enf. Coordinator Epifanio Villarreal

Violation Number 4
Rule Cite(s) 30 Tex. Admin. Code § 290.109(c)(2)(F) and 290.122(c)(2)(B)
Violation Description Failed to collect at least five distribution coliform samples the month following total coliform positive sample result and failed to provide public notification of the failure to collect five distribution samples for the months of September 2008, December 2008, January 2009, February 2009, July 2009.
Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	Potential	x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Failure to collect water samples for coliform analysis may expose the public to a significant amount of undetected contaminants which would exceed levels that are protective of human health.

Adjustment \$750
 \$250

Violation Events

Number of Violation Events 5 150 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

Five monthly events are recommended for the months in which no distribution samples were collected.

Good Faith Efforts to Comply 0.0% Reduction \$0

	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 for this violation.

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$628 **Violation Final Penalty Total** \$2,555

This violation Final Assessed Penalty (adjusted for limits) \$2,555

Economic Benefit Worksheet

Respondent Gloria Ann Poppe and Kenneth John Poppe dba Poppes Pub & Grub
Case ID No. 39674
Reg. Ent. Reference No. RN105452650
Media Public Water Supply
Violation No. 4

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				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)

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]	\$550	1-Sep-2008	31-Jul-2009	1.83	\$50	\$550	\$600
Other (as needed)	\$25	1-Jan-2009	1-Nov-2009	1.75	\$2	\$25	\$27

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect the appropriate number of water samples (22 total) the month following a total-coliform positive sample result (\$25 per sample and \$5 for public notice). The Respondent failed to collect 5 samples for September 2008, December 2008, January 2009, February 2009, and 2 additional samples for July 2009 and failed to provide public notices during the period that a public notice was required.

Approx. Cost of Compliance \$575

TOTAL \$628

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603319419 POPPE, GLORIA ANN	Classification:	Rating:
Regulated Entity:	RN105452650 POPPE PUB & GRUB	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	2350058
Location:	13176 FM RD 236, VICTORIA, VICTORIA COUNTY, TEXAS		
TCEQ Region:	REGION 14 - CORPUS CHRISTI		
Date Compliance History Prepared:	May 11, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 11, 2005 to May 11, 2010		

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

Name: Epi Villarreal Phone: (361) 825-3425

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
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

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: 06/07/2009 ADMINORDER 2008-0553-PWS-E
 - Classification: Moderate
 - Citation: 30 TAC Chapter 290, SubChapter D 290.39(m)
 - Description: Failure 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. This notification must be made immediately upon meeting the definition of a public water supply system.
 - Classification: Major
 - Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(1)
30 TAC Chapter 290, SubChapter D 290.42(e)
 - Description: Failure to provide disinfection facilities for all groundwater supplies for the purposed of microbiological control and distribution protection and shall be in conformity with applicable disinfection requirements in 30 TAC Chapter 290 Subchapter D 290.42 (e).
- 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)
2	04/19/2010	(799757)
3	04/30/2010	(799950)
4	04/30/2010	(799951)
5	04/30/2010	(799954)
6	04/30/2010	(800796)
7	04/30/2010	(800804)
8	04/30/2010	(800809)
9	05/07/2010	(801297)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 07/31/2008 (800796) CN603319419
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 06/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 06/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 11/19/2008 (799757) CN603319419
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 09/2008 - Failure to collect collect all 5 distribution samples following a coliform found month.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Routine Monitoring Violation 09/2008 - Failure to post public notice for not collecting all 5 distribution samples following a coliform found month.

Date: 01/13/2009 (800804) CN603319419
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
 Description: TCR Repeat Monitoring Violation 11/2008 - Failure to collect all repeats following a coliform found result.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Repeat Monitoring Violation 11/2008 - Failure to post public notice for not collecting all repeats following a coliform found result.

Date: 04/07/2009 (800809) CN603319419
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
 Description: TCR Repeat Monitoring Violation 01/2009 - Failure to collect all repeats following a coliform found result.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Repeat Monitoring Violation 01/2009 - Failure to post public notice for not collecting all repeats following a coliform found result.

Date: 06/09/2009 (799950) CN603319419
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
 Description: TCR MCL Violation 06/2009 - System exceeded a Maximum Contaminant Level (MCL) Violation.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(2)
 Description: TCR PN MCL Violation 06/2009 - Failure to post public notice for a system that exceeded a Maximum Contaminant Level (MCL) Violation.

Date: 08/04/2009 (799950) CN603319419
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
 Description: TCR Repeat Monitoring Violation 06/2009 - Failure to collect any repeats following a coliform found result.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Repeat Monitoring Violation 06/2009 - Failure to post a public notice for not collecting all repeats following a coliform found result.

Date: 09/16/2009 (799951) CN603319419
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
 Description: TCR Increase Monitoring Violation 07/2009 - Failure to collect all 5 distribution samples following a coliform found month.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
 Description: TCR PN Increase Monitoring Violation 07/2009 - Failure to post public notice for not collecting all 5 distribution samples following a coliform found month.

Date: 03/29/2010 (799954) CN603319419
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 Description: TCR Routine Monitoring Violation 02/2010 - Failure to collect any routine monitoring sample(s).

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 Report

Customer/Respondent/Owner-Operator:	CN603319401	POPPE, KENNETH JOHN	Classification:	Rating:
Regulated Entity:	RN105452650	POPPES PUB & GRUB	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION		2350058	
Location:	13176 FM RD 236, VICTORIA, VICTORIA COUNTY, TEXAS			
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	May 11, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 11, 2005 to May 11, 2010			

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

Name: Epi Villarreal Phone: (361) 825-3425

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
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

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: 06/07/2009 ADMINORDER 2008-0553-PWS-E
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.39(m)
- Description: Failure 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. This notification must be made immediately upon meeting the definition of a public water supply system.
- Classification: Major
- Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(1)
30 TAC Chapter 290, SubChapter D 290.42(e)
- Description: Failure to provide disinfection facilities for all groundwater supplies for the purposed of microbiological control and distribution protection and shall be in conformity with applicable disinfection requirements in 30 TAC Chapter 290 Subchapter D 290.42 (e).
- 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) |
| 2 | 04/19/2010 | (799757) |
| 3 | 04/30/2010 | (799950) |
| 4 | 04/30/2010 | (799951) |
| 5 | 04/30/2010 | (799954) |
| 6 | 04/30/2010 | (800796) |
| 7 | 04/30/2010 | (800804) |
| 8 | 04/30/2010 | (800809) |
| 9 | 05/07/2010 | (801297) |

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

Date: 07/31/2008 (800796) CN603319401
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 06/2008 - Failure to collect any routine monitoring sample(s).

Date: 11/19/2008 (799757) CN603319401
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 06/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 01/13/2009 (800804) CN603319401
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
Description: TCR Repeat Monitoring Violation 11/2008 - Failure to collect all repeats following a coliform found result.

Date: 04/07/2009 (800809) CN603319401
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Repeat Monitoring Violation 11/2008 - Failure to post public notice for not collecting all repeats following a coliform found result.

Date: 06/09/2009 (799950) CN603319401
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
Description: TCR MCL Violation 06/2009 - System exceeded a Maximum Contaminant Level (MCL) Violation.

Date: 08/04/2009 (799950) CN603319401
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(2)
Description: TCR PN MCL Violation 06/2009 - Failure to post public notice for a system that exceeded a Maximum Contaminant Level (MCL) Violation.

Date: 09/16/2009 (799951) CN603319401
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
Description: TCR Increase Monitoring Violation 07/2009 - Failure to collect all 5 distribution samples following a coliform found month.

Date: 09/16/2009 (799951) CN603319401
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Increase Monitoring Violation 07/2009 - Failure to post public notice for not collecting all 5 distribution samples following a coliform found month.

Date: 03/29/2010 (799954)

CN603319401

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

Description: TCR Routine Monitoring Violation 02/2010 - Failure to collect any routine monitoring sample(s).

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	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
GLORIA ANN POPPE DBA POPPES	§	
PUB & GRUB AND KENNETH JOHN	§	ENVIRONMENTAL QUALITY
POPPE DBA POPPES PUB & GRUB;	§	
RN105452650	§	

DEFAULT ORDER

DOCKET NO. 2010-0768-PWS-E

At its _____ agenda meeting, 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 respondents. The respondents made the subject of this Order are Gloria Ann Poppe DBA Poppes Pub & Grub and Kenneth John Poppe DBA Poppes Pub & Grub (collectively "Respondents").

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

FINDINGS OF FACT

1. Respondents own and operated a restaurant with a public water system located at 13176 FM 236, Victoria, Victoria County, Texas (the "Facility"). The Facility provides water for human consumption, 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(66).
2. During a record review conducted on April 5, 2010 a TCEQ Central Office investigator documented that Respondent:
 - a. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the months of November 2008, December 2008, January 2009, and June 2009, and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform positive sample for November 2008, December 2008, January 2009, and June 2009;
 - b. Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform during the month of June 2009, and failed to provide public notice of the exceedence for June 2009;
 - c. Failed to collect routine distribution water samples for coliform analysis for the months of June 2008, July 2008, and February 2010, and failed to provide

public notice of the failure to sample for the months of June 2008 and July 2008; and

- d. Failed to collect at least five distribution coliform samples the month following a total coliform positive sample result, and failed to provide public notification of the failure to collect five distribution samples for the months of September 2008, December 2008, January 2009, February 2009, and July 2009.
3. Respondent received notice of the violations on or about May 12, 2010.
4. The Executive Director recognizes that Respondents no longer operate the Facility as of May 26, 2010.
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 Gloria Ann Poppe DBA Poppes Pub & Grub and Kenneth John Poppe DBA Poppes Pub & Grub" (the "EDPRP") in the TCEQ Chief Clerk's office on August 5, 2010.
6. By letter dated August 5, 2010, sent to Respondents' last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDPRP. The United States Postal Service ("USPS") returned the EDPRP sent by certified mail and the first class mail as "refused,"¹ indicating that Respondents received notice of the EDPRP.
7. More than 20 days have elapsed since Respondents were served with notice of the EDPRP, provided by the Executive Director. Respondents 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 No. 1, Respondents 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. 2.a., Respondents failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the months of November 2008, December 2008, January 2009, and June 2009, and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform positive sample for November 2008, December 2008, January 2009, and June 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B).

¹ The U. S. Postal Service returned the EDPRP with the notation "refused" on the envelope. "When a letter is returned as "refused" or "unclaimed," the notice is sufficient if it is apparent that the address was valid and could be located by the postal office." *Wright v. Wentzel*, 749 S.W.2d 228, 232 (Tex. App.-- Houston [1st Dist.] Mar. 31, 1988, no pet.). Respondents' last known address was provided to the TCEQ by Respondents during a previous investigation conducted on January 23, 2008. Notations on the returned envelopes indicate that the address was valid and could be located by the USPS.

3. As evidenced by Finding of Fact No. 2.b., Respondents failed to comply with the MCL for total coliform during the month of June 2009, and failed to provide public notice of the exceedence for June 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2), and TEX. HEALTH & SAFETY CODE § 341.031(a).
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to collect routine distribution water samples for coliform analysis for the months of June 2008, July 2008, and February 2010, and failed to provide public notice of the failure to sample for the months of June 2008 and July 2008, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d).
5. As evidenced by Finding of Fact No. 2.d., Respondents failed to collect at least five distribution coliform samples the month following a total coliform positive sample result, and failed to provide public notification of the failure to collect five distribution samples for the months of September 2008, December 2008, January 2009, February 2009, and July 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B).
6. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
7. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by Respondents failed to file a timely answer 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 Respondents and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051 and TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondents 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.
9. An administrative penalty in the amount of six thousand six hundred forty-three dollars (\$6,643.00) 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.
10. 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. Respondents are assessed an administrative penalty in the amount of six thousand six hundred forty-three dollars (\$6,643.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Gloria Ann Poppe DBA Poppes Pub & Grub and Kenneth John Poppe DBA Poppes Pub & Grub; Docket No. 2010-0768-PWS-E" to:

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

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.
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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent 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 Respondent if the Executive Director determines that Respondent has 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF TAMMY L. MITCHELL

STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Gloria Ann Poppe DBA Poppes Pub & Grub and Kenneth John Poppe DBA Poppes Pub & Grub," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on August 5, 2010.

The EDPRP was mailed to Respondent's last known address on August 5, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service ("USPS") returned the EDPRP sent by certified mail and the first class mail as "refused," indicating that Respondents received notice of the EDPRP.

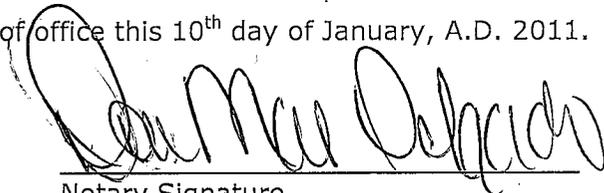
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Tammy L. Mitchell, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tammy L. Mitchell, 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 10th day of January, A.D. 2011.



Notary Signature

