State Office of Administrative Hearings

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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CHIEF CLERKS OFFICE

Shelia Bailey Taylor
Chief Administrative Law Judge

May 23, 2007

Derek Seal
General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

VIA FACSIMILE (512) 239-5533

Re: SOAH Docket No. 582-05-7639; TCEQ Docket No. 2004-1768-MWD-E; In Re: Al Jodoin dba Lake Whitney RV Community

Dear Mr. Seal:

I have reviewed the exceptions to the Proposal for Decision on Remand (PFD) filed in this case. After reviewing those exceptions, I continue to maintain the recommendations set forth in the PFD. However, I will offer a brief responsive comment at this time.

In exceptions, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) contends that the TCEQ penalty policy already takes into account the considerations I raised in the PFD as the basis of my recommendation to not assess a penalty against the Respondent in this case. I agree that the TCEQ penalty policy provides guidance on determining an appropriate penalty amount and establishes the proper penalty to be assessed in most cases. However, I also believe that the Commission has discretion in each case before it to decide whether the facts of the case would warrant a departure from strict adherence to the penalty policy. This approach gives the Commission consistency in its treatment of violations, but also allows discretion for situations where justice may dictate an outcome different than that provided for in the penalty policy. As I mention in the PFD, the Commission would be legally justified to impose the penalties sought by the ED in this case, if it disagrees with the ALJ's penalty recommendation. However, I believe that justice would warrant not imposing penalties against the Respondent in this case, as mentioned in the PFD.

Accordingly, I have no changes to the PFD nor proposed order. I will appear at the Commission's open meeting regarding this case and be available to answer any questions that may arise at that time.

Sincerely,

Craig R. Bennett
Administrative Law Judge

CRB/ls
cc: Mailing List

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: AL JODOIN / LAKE WHITNEY RV COMMUNITY

SOAH DOCKET NUMBER: 582-05-7639

REFERRING AGENCY CASE: 2004-1768-MWD-E

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW JUDGE
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