

SOAH DOCKET NO. 582-06-2366
TCEQ DOCKET NO. 2005-1177-PWS-E

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CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER

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BEFORE THE

VS.

STATE OFFICE OF

AL JABOUR DBA RIVERS
COUNTRY VILLAS AND RV PARK,
RESPONDENT

ADMINISTRATIVE HEARINGS

**THE EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ADMINISTRATIVE LAW
JUDGE'S PROPOSAL FOR DECISION**

TO THE HONORABLE JUDGE PACEY:

COMES NOW the Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), represented by the Litigation Division, and files these Exceptions to the Administrative Law Judge's Proposal for Decision. In support thereof, the Executive Director would show the following:

I. PROPOSED ORDER

The Executive Director ("ED") respectfully requests that the ALJ make the following revisions to the Proposed Order:

INTRODUCTION

The Executive Director respectfully requests that the citation in the introductory sentence be revised to clarify the citation abbreviation. Currently, the sentence reads, "..., pursuant to TEX. HEALTH & SAFETY CODE (Health and Safety Code ch. 341, and the rules of the Commission." The sentence should be changed and revised to read, "..., TEX. HEALTH & SAFETY CODE (Health and Safety Code) ch. 341, and the rules of the Commission."

FINDING OF FACT NO. 4

The Executive Director respectfully requests that Finding of Fact No. 4 be revised to include the complete date upon which the Respondent filed his answer. Finding of Fact No. 4 currently states, "Respondent replied to the allegations on March 2006, and requested a hearing." Finding of Fact No. 4 should be revised to read, "Respondent replied to the allegations on March 16, 2006, and

requested a hearing.”

NEW FINDING OF FACT

The Executive Director respectfully requests that a new Finding of Fact be inserted after Finding of Fact No. 8 and designated as Finding of Fact No. 9, be created to reflect the service of process for the Executive Director's Second Amended Report and Petition (“EDSARP”). This new Finding of Fact No. 9 should read, “On October 19, 2006, notice and a copy of the EDSARP were mailed to Respondent by certified mail, return receipt requested, and by first class mail at Respondent's last known address.” The Finding of Facts following Finding of Fact No. 9 should be renumbered accordingly.

SECOND FINDING OF FACT NO. 17

The Executive Director respectfully requests that the second Finding of Fact No. 17, which follows Finding of Fact No. 18 and reads in part, “The Executive Director did not request...”, be renumbered to correctly reflect its numerical position in the Findings of Fact. The second Finding of Fact No. 17 should be renumbered to Finding of Fact No. 20, taking into account the renumbering requested above.

CONCLUSION OF LAW NO. 1

The Executive Director respectfully requests that Conclusion of Law No. 1 be revised to correct the citations. Conclusion of Law No. 1 currently reads, “The public hearing in this proceeding was properly held under the authority of and in accordance with TEX. WATER CODE (Water Code), chs. 5 and 7, and Health and Safety Code § 341,049 and applicable Commission rules.” Conclusion of Law No.1 should read, “The public hearing in this proceeding was properly held under the authority of and in accordance with TEX. WATER CODE (Water Code) chs. 5 and 7, and Health and Safety Code § 341.049 and applicable Commission rules.”

CONCLUSION OF LAW NO. 2

The Executive Director respectfully requests that Conclusion of Law No. 2 be revised to clarify the citations. Conclusion of Law No. 2 currently reads, “The Commission has jurisdiction and authority to consider the EDSARP, to determine whether the alleged violations occurred, and to assess administrative penalties for violations, pursuant to Water Code chs. 5 and 7 Health and Safety Code § 341.049.” Conclusion of Law No. 2 should be revised to read, “The Commission has jurisdiction and authority to consider the EDSARP, to determine whether the alleged violations occurred, and to assess administrative penalties for violations, pursuant to Water Code chs. 5 and 7 and Health and Safety Code § 341.049.”

CONCLUSION OF LAW NO. 5

The Executive Director respectfully requests that Conclusion of Law No. 5 be revised to clarify and maintain consistency of the citations. Conclusion of Law No. 5 currently reads, "Based upon the above Findings of Fact, Respondent was properly notified of the public hearing on the alleged violation and proposed penalty, in accordance with 30 TAC §§ 1.12 and 80.6(b)(3), TEX. GOV'T CODE §§ 2001.051 and 2001.052." Conclusion of Law No. 5 should be revised to read, "Based upon the above Findings of Fact, Respondent was properly notified of the public hearing on the alleged violation and proposed penalty, in accordance with 30 TEX. ADMIN. CODE (TAC) §§ 1.12 and 80.6(b)(3), TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052."

CONCLUSION OF LAW NO. 6

The Executive Director respectfully requests that Conclusion of Law No. 6 be revised to correct the first citation. Conclusion of Law No. 6 currently reads, "Based upon the above Findings of Fact, Respondent violated 30 TAC §§ 290.109(c)(2)(A)(I), (c)(2)(F), (c)(3)(A)(ii), and (f)(2); and 290.122(c)(2)(B); and Health and Safety Code §341.033(d)." Conclusion of Law No. 6 should read, "Based upon the above Findings of Fact, Respondent violated 30 TAC §§ 290.109(c)(2)(A)(i), (c)(2)(F), (c)(3)(A)(ii), and (f)(2); and 290.122(c)(2)(B); and Health and Safety Code §341.033(d)."

Respectfully submitted,

Texas Commission on Environmental Quality

Glenn Shankle
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Mary R. Risner, Division Director
Litigation Division

By: 

Robert R. Mosley
State Bar of Texas No. 24002654
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
Telephone: (512) 239-3400
Fax: (512) 239-3434

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2007, the original and eleven (11) copies of the foregoing "Exceptions to Administrative Law Judge's Proposal for Decision" ("Exceptions") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

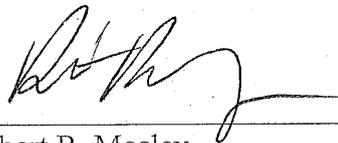
I further certify that on this day a true and correct copy of the foregoing Exceptions was mailed via Certified Mail, return receipt requested (Article No. 7004 1350 0002 7566 1689), to:

Mr. Al Jabour
Rivers Country Villas and RV Park
3602 Rivers Road
Manvel, Texas 77578

I further certify that on this day a true and correct copy of the foregoing Exceptions was hand-delivered, to Blas Coy, Jr., Office of the Public Interest Counsel, Texas Commission on Environmental Quality - MC 103.

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via fax to (512) 475-4994 and mailed via inter agency mail, to:

The Honorable Stephen J. Pacey
Administrative Law Judge
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025



Robert R. Mosley
Attorney
Litigation Division
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER REQUIRING PAYMENT OF ADMINISTRATIVE PENALTIES
by AL JABOUR DBA RIVERS COUNTRY VILLAS AND RV PARK
TCEQ Docket No. 2005-1177-PWS-E
SOAH Docket No. 582-06-2366

On _____, 2007, the Texas Commission on Environmental Quality (Commission) considered the Executive Director (ED)'s Second Amended Report and Petition (EDSARP) recommending that the Commission enter an order assessing administrative penalties against Al Jabour dba Rivers Country Villas and RV Park (Respondent), pursuant to TEX. HEALTH & SAFETY CODE (Health and Safety Code) ch. 341, and the rules of the Commission. A Proposal for Decision on the report and petition was presented by Stephen J. Pacey, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's Proposal for Decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At the time of the violations alleged in the EDSARP, Respondent owned and operated a recreational area and RV Park located at 3602 Rivers Road, Manvel, Brazoria County, Texas (Facility).

2. The Facility has 23 service connections and serves at least 25 people per day for at least 60 days per year. As such the Facility is a public water system
3. On February 21, 2006, the ED filed the Executive Director's Preliminary Report and Petition with the Commission, seeking assessment of administrative penalties against Respondent.
4. Respondent replied to the allegations on March 16, 2006, and requested a hearing.
5. On May 10, 2006, the ED filed the EDFARP with the Commission, seeking assessment of administrative penalties against Respondent.
6. On October 19, 2006, the ED filed the EDSARP with the Commission, seeking assessment of administrative penalties against Respondent
7. The EDSARP included a statement of the allegations and applicable laws and rules, recommendations for a penalty, and a statement of Respondent's right to a hearing on the occurrence of the violations and appropriate penalties.
8. On May 10, 2006, notice and a copy of the EDFARP were mailed to Respondent by certified mail, return receipt requested, and by first class mail at Respondent's last known address.
9. On October 19, 2006, notice and a copy of the EDSARP were mailed to Respondent by certified mail, return receipt requested, and by first class mail at Respondent's last known address.
10. On May 25, 2006, the Chief Clerk of the Commission provided notice by certified mail to Respondent concerning the preliminary hearing scheduled in this docket before SOAH.
11. The parties appeared at a preliminary hearing, held on June 15, 2006, and submitted a proposed scheduling order that included a request for an evidentiary hearing on October 16, 2006.

12. The parties' proposed scheduling order was adopted in the ALJ's Order No. 1, dated July 5, 2006, and sent to the parties.
13. After two continuances the evidentiary hearing was conducted on December 12, 2006, in Austin, Texas. The ED and Respondent appeared and presented evidence and argument.
14. During a records review conducted on June 1, 2004, a TCEQ central office investigator documented that Respondent:
 - a. failed to conduct routine bacteriological monitoring of the water supply during the months of February, August, and September 2003 and May 2004, and failed to provide public notification of the failure to conduct routine bacteriological monitoring during the month of May 2004;
 - b. failed to collect samples within 24 hours of being notified of a total coliform-positive result on a routine sample during the month of May 2003;
 - c. failed to collect at least five routine bacteriological samples following total coliform-positive results the preceding month during the months of June 2003 and February 2004, and failed to provide public notice thereof in February 2004; and
 - d. exceeded the maximum contaminant level for total coliform bacteria and failed to provide public notice thereof in January 2004.
15. The Commission's 2002 Penalty Policy applies to the violations alleged.
16. The following penalties for the alleged violations are in accordance and consistent with the Commission's 2002 Penalty Policy:
 - a. For the matter stated in Finding of Fact No. 13a, \$1,150.00.
 - b. For the matter stated in Finding of Fact No. 13b, \$288.00.
 - c. For the matter stated in Finding of Fact No. 13c, \$575.00.
 - d. For the matter stated in Finding of Fact No. 13d, \$288.00.

17. In addition to other considerations, in making its penalty recommendation, Staff took into account the nature, circumstances, extent, duration, and gravity of the prohibited acts; the need to deter future violations; and the amounts that have been assessed for similar violations.
18. Staff's determination as described in Findings of Fact Nos. 14 and 16 is in accordance and consistent with the Commission's 2002 Penalty Policy.
19. Respondent did not present financial documents showing his inability to pay an administrative penalty.
20. The ED did not request that Respondent take corrective action and did not tender any evidence applicable to any appropriate corrective action.

CONCLUSIONS OF LAW

1. The public hearing in this proceeding was properly held under the authority of and in accordance with TEX. WATER CODE (Water Code) chs. 5 and 7, and Health and Safety Code § 341.049 and applicable Commission rules.
2. The Commission has jurisdiction and authority to consider the EDSARP, to determine whether the alleged violations occurred, and to assess administrative penalties for violations, pursuant to Water Code chs. 5 and 7 and Health and Safety Code § 341.049.
3. SOAH has jurisdiction over matters related to the hearing in this action, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Chapter 2003 of the Texas Government Code.

4. Based upon the above Findings of Fact, Respondent was properly notified of the EDSARP, and the opportunity to request a hearing on the alleged violations and recommended administrative penalty.
5. Based upon the above Findings of Fact, Respondent was properly notified of the public hearing on the alleged violation and proposed penalty, in accordance with 30 TEX. ADMIN. CODE (TAC) §§ 1.12 and 80.6(b)(3), TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
6. Based upon the above Findings of Fact, Respondent violated 30 TAC §§ 290.109(c)(2)(A)(i), (c)(2)(F), (c)(3)(A)(ii), and (f)(2); and 290.122(c)(2)(B); and Health and Safety Code §341.033(d).
7. The provisions of Health and Safety Code § 341.049 authorize the Commission to assess administrative penalties for violations of the type addressed in this case in an amount not to exceed \$1,000.00 for each day of violation.
8. In calculating the penalties for violations by the Respondent, the ED appropriately applied the Commission's 2002 Penalty Policy and correctly classified Respondent's violations under that Penalty Policy's Environmental/Property and Human Health and Programmatic Matrices.
9. Based upon the above Findings of Fact and Conclusions of Law, Respondent should be assessed an administrative penalty in the amount of \$2,300.00.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Respondent is assessed an administrative penalty in the amount of \$2,300.00 for the violation of the Commission's rules, and the Health and Safety Code found above.
2. 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.
3. The Commission shall not be restricted in any manner from requiring corrective actions or penalties for any other violations that are not raised here.
4. All checks submitted to pay the penalty imposed by this Order shall be made out to "The Texas Commission on Environmental Quality."
5. 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: Al Jabour d/b/a Rivers Country Villas and RV Park, Docket No. 2005-1177-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

6. All relief not expressly granted in this Order is denied.
7. The Executive Director may grant an extension of any deadline in 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.

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with the terms or conditions in this Order.
9. The Chief Clerk shall provide a copy of this Order to each of the parties.
10. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TAC § 70.106(d) and 30 TEX. GOV'T. CODE ANN. § 2001.144.
11. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kathleen Hartnett White, Chairman
For the Commission