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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 14, 2009

2009 MAY 14 AM 10:27
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Executive Director's Exceptions to Proposal for Decision
The Fort Worth Boat Club
SOAH Docket No. 582-08-2379; TCEQ Docket No. 2007-1117-MWD-E; Enf. No. 34179

Dear Ms. Castañuela:

Enclosed for filing are the originals of 1) The Executive Director's Suggested Modifications to the Honorable Administrative Law Judge's Order and 2) The Executive Director's Proposed Order to Supplement the Executive Director's Suggestions to the Honorable Administrative Law Judge's Order.

Enclosed please also find eight copies of this letter to you, eight copies of the Executive Director's Exceptions to Proposal for Decision, and eight copies of the letter to the Respondent. Please file stamp one copy of each of these documents and return them to Kari L. Gilbreth, Attorney, Litigation Division, MC 175. If you have any questions or comments, please call me at (512) 239-1320.

Sincerely,

Kari L. Gilbreth
Attorney
Litigation Division

Enclosures

cc: The Honorable Roy G. Scudday, State Office of Administrative Hearings
Robert E. Aldrich, Attorney for The Fort Worth Boat Club
Samuel Short, Enforcement Division, TCEQ, MC 149
Sid Slocum, Water Section Manager, TCEQ, MC R-4
Blas Coy, Public Interest Counsel, TCEQ, MC 103

Buddy Garcia, *Chairman*
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Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 14, 2009

Hand-Delivered Via Messenger and Via Facsimile No. (512) 475-4994

The Honorable Roy G. Scudday
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711

Re: Executive Director's Exceptions to Proposal for Decision
The Fort Worth Boat Club
SOAH Docket No. 582-08-2379; TCEQ Docket No. 2007-1117-MWD-E

Dear Judge Scudday:

Please find enclosed a copy of the Executive Director's Exceptions to Proposal for Decision ("Exceptions") and a copy of the cover letter to the TCEQ Chief Clerk. These Exceptions are being filed in response to your Proposal for Decision and Proposed Order dated April 24, 2009. The original "Exceptions" have been filed with the TCEQ Chief Clerk.

Sincerely,

Kari L. Gilbreth
Attorney
Litigation Division

Enclosures

cc: Office of the Chief Clerk, MC 105
Robert E. Aldrich, Attorney for The Fort Worth Boat Club
Samuel Short, Enforcement Division, TCEQ, MC 149
Sid Slocum, Water Section Manager, TCEQ, MC R-4
Blas Coy, Public Interest Counsel, TCEQ, MC 103

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 MAY 14 AM 10: 27

CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-08-2379
TCEQ DOCKET NO. 2007-1117-MWD-E

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,	§	**BEFORE THE**
Petitioner	§	**STATE OFFICE OF**
v.	§	
THE FORT WORTH BOAT CLUB,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

EXECUTIVE DIRECTOR'S EXCEPTIONS TO PROPOSAL FOR DECISION

NOW COMES the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") and hereby files these Exceptions to the Administrative Law Judge's Proposal for Decision.

I. Introduction

The Fort Worth Boat Club ("Boat Club") owns and operates a wastewater treatment facility located on the east side of Eagle Mountain Reservoir, approximately two miles west of Farm-to-Market Road 1220 on Boat Club Road, Fort Worth, Tarrant County, Texas (the "Facility"). At the time of the violations, Boat Club was operating under expired Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 11123001. Further, Boat Club failed to submit its annual sludge report ("sludge report") for the monitoring period ending July 31, 2006 in a timely manner. Boat Club did not produce the sludge report to TCEQ until July 21, 2008. As noted in the Honorable Scudday's ("ALJ") Proposal for Decision, a third violation for Boat Club's complete failure to submit the sludge report was removed from the Enforcement action once the document was produced on July 21, 2008.

The Executive Director is seeking administrative penalties in the amount of $11,880.00. The ALJ's Proposal for Decision ("PFD") recommended that the penalty be reduced to $10,980.00 "in light of the fact that the Agreed Order[1] included a provision that the entire assessed penalty of $3,000.00 be used to implement an SEP, some reduction would be in order and that a 10% reduction would be appropriate."

II. Exceptions

The Executive Director agrees with and supports the adoption of the majority of the ALJ's findings and conclusions. The ALJ properly determined Boat Club was operating under expired TPDES Permit No. 11123001, and that it also failed to timely submit its annual sludge report for the

[1] ALJ's PFD, page 4; TCEQ Agreed Order, Docket No. 2000-1166-MWD-E (approved by the TCEQ Commission on November 20, 2002); ED Exhibit 12

monitoring period ending July 31, 2006, as documented during an inspection conducted on May 9, 2007 by a TCEQ Dallas/Fort Worth Regional Office investigator.

Penalty Calculation - Supplemental Environmental Project ("SEP") Penalty Amount Reduction for a Previous Agreed Order

The Executive Director ("ED") respectfully disagrees with the ALJ's rejection of the applicability of the full amount of the penalty calculated in the Penalty Calculation Worksheet ("PCW") utilizing the penalty enhancement factors contained in the TCEQ 2002 Penalty Policy[2] ("Penalty Policy"). The Penalty Policy calculates a 25% percent increase (enhancement) for each agreed final enforcement order without a denial of liability (also known as a "Findings Order") which occurred during the previous five years of a Respondent's compliance history. Boat Club's previous Findings Order was properly recognized in Boat Club's previous five-year compliance history for the current enforcement action and was appropriately included in the Penalty Calculation Worksheet ("PCW") as a 25% enhancement to the administrative penalty in the current case.

The ED respectfully disagrees with the ALJ's conclusion that because Boat Club's full penalty of $3,000 assessed in the previous Findings Order was directed towards a SEP rather than to the Texas General Revenue Fund, Boat Club is entitled to a reduction in the enhancement of its penalty in the current enforcement case. A SEP is a means for Respondents to direct penalties for environmental violations toward environmentally beneficial uses. Through a SEP, a Respondent may choose to invest penalty dollars into improving the environment rather than paying directly into the Texas General Revenue Fund. In fact, all Respondents under formal enforcement are offered the opportunity to pay a portion of the administrative penalty into a SEP.

Boat Club's SEP involved a 100% contribution of its assessed penalty of $3,000.00 for violations contained in its Findings Order. The SEP[3] contribution to the City of Fort Worth was to be used in the City of Fort Worth's Household Hazardous Waste Collection Facility project. The contribution was to be applied to the costs of disposal, treatment or recycling of household hazardous waste.

The TCEQ SEP program contemplates that "for-profit businesses" may offset only up to 50% of their penalty with a SEP. However, on a case-by-case basis, the Executive Director may approve a higher offset for a "for-profit business" proposing a SEP, based on the project's significant relationship to the affected community or the project's extraordinary opportunity for environmental enhancement. Regardless of whether a SEP contribution is authorized for 50% or 100% of a

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[2] TCEQ 2002 Penalty Policy; ED Exhibit 12

[3] Agreed Order, TCEQ Docket No. 2000-1166-MWD-E, SEP "Attachment A"; Bates Stamp Nos. 7-8, ED Exhibit 12

Respondent's penalty amount as a result of alleged or admitted environmental violations, SEPs should not be utilized as a way for Respondents under enforcement to receive "credit" for alleged or admitted violations of TCEQ rules or State statutes.

In further support of the ED's position that Fort Worth should not receive "credit" for its SEP, the ED notes that page 2, paragraph 6 of the SEP (entitled "Clean Texas Program") states the following:

> "Fort Worth Boat Club shall not include this SEP in any application made to TNRCC[4] under the 'Clean Texas' (or any successor) program(s). ***Similarly, Fort Worth Boat Club may not seek recognition for this contribution in any other State or Federal Regulatory program***." (emphasis added)

Paragraph 7 of the SEP (entitled "Other SEPs by TNRCC or Other Agencies") states the following:

> "The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for Fort Worth Boat Club under any other Agreed Order negotiated with the TNRCC or any other agency of the State or Federal government."

The ED contends that the language contained in paragraphs 6 and 7 of the SEP put Boat Club on notice that its contribution to the City of Fort Worth SEP was not to be used to seek "recognition" for its contribution of administrative penalties.

Finding of Fact No. 16 in the ALJ's proposed Order states:

> "The Commission's 2002 Penalty Policy provides that, in determining the penalty enhancement for violations, agreed final enforcement orders without a denial of liability require a 25% enhancement. There is nothing in the Policy that would reduce this enhancement when such an Order includes a provision that the entire assessed penalty is to be used to implement an SEP."

The Executive Director does not contemplate that Respondents will receive "credit" for contributions to SEPs. No provision for a penalty reduction under this circumstance is noted in either the Penalty Policy nor the PCWs utilized by Enforcement Coordinators in calculating administrative penalties for Respondents under enforcement. Considering the frequency with which Respondents routinely enter into Agreed Orders containing SEP Agreements, the Penalty Policy would specifically state that participation in a SEP entitles a Respondent to a penalty reduction had

[4] "TNRCC" (Texas Natural Resource Conservation Commission) is the predecessor agency to TCEQ.

the Commission intended this to be the case. The Penalty Policy recognizes circumstances under which Respondents may be entitled to a reduction in their assessed penalty. For example, the Penalty Policy provides for a reduction for "good faith efforts to comply" if a Respondent achieves compliance by a certain deadline(s). The ALJ correctly concludes that Fort Worth does not qualify for a good faith reduction of its penalty in this case.[5]

The Penalty Policy also allows for reductions in administrative penalties for regulated entities classified as "high performers" (which is not applicable in this case), and for "other factors as justice may require". Fort Worth did not argue that it is entitled to a reduction of its administrative penalty amount for "other factors as justice may require", and the ED does not believe that circumstances surrounding the current enforcement action support a reduction for this, or any other, factor.

When SEPs are offered to regulated entities, no portion of the penalty amounts are waived. Respondents participating in the optional SEP program still pay the full amount of penalty assessed, and merely choose whether their penalty shall be applied to a SEP or contributed to the State's General Revenue Fund. Furthermore, no Respondent who has participated in the SEP program has ever been given a penalty reduction in a subsequent Order because of prior SEP participation. In order to remain consistent with previously approved Commission Orders which contain SEP contributions, the ED recommends that the proposed penalty amount of $11,880.00 should be upheld in this case.

The ALJ correctly applies the 2002 Penalty Policy with regard to the enhancements in the PCW regarding one notice of violation ("NOV") for one written NOV containing the same or similar violations as those in the current enforcement actions which increased the penalty by 5%, and one "other written NOV" which increased the penalty amount by an additional 2% .[6]

III. Suggested Modifications

Based upon the arguments contained in Section II., above, the Executive Director suggests the following changes be made to the ALJ's Proposed Order:

1. Eliminate Finding of Fact No. 17 and renumber the remaining three paragraphs accordingly.

2. In Finding of Fact No. 19 (currently numbered 20, but would be renumbered to "19" per suggested modification 1, above), change "$10,980.00" to "$11,880.00"; and, revise, "22% enhancement of $1,980.00 to "32% enhancement of $2,880.00".

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[5] See ALJ's PFD, pgs. 4-5.
[6] See ALJ's Proposed Order, page 3, Finding of Fact No. 14.

3. In Conclusion of Law No. 10, change "$10,980.00" to "$11,880.00".

4. In Ordering Provision No. 1, change "$10,980.00 for violation of 30 TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE §§ 305.125(2) and (17)" to read as follows:

   "$11,880.00 for violations of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE §§ 305.125(2) and (17), and TPDES Permit No. 11123001, Sludge Provisions."

IV. Other Suggested Modifications

1. Modify Finding of Fact No. 1 to include, "until July 21, 2008" at the end of the sentence to clarify that Boat Club later provided the annual sludge report ("ASR") to TCEQ.

2. Modify the position of the language in Finding of Fact No. 6 so it is not indented for purposes of consistency of formatting with the rest of the Order.

3. Modify Finding of Fact (currently numbered 18, but would be renumbered to "17" per suggested modification 1, under III., above) to include "either before the issuance of a NOV or before the EDPRP is filed" at the end of the sentence to clarify when reductions for good faith efforts are recognized.

V. Conclusion

The Executive Director respectfully requests that the Commission adopt the ALJ's Proposal for Decision and enter the Proposed Order with the changes requested by the Executive Director.

Respectfully Submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Kathleen C. Decker, Director
Litigation Division

By:

Kari L. Gilbreth
State Bar of Texas No. 24040969
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-1320
(512) 239-3434 (FAX)

CERTIFICATE OF DELIVERY

I hereby certify that on the 14th day of May, 2009, the original and seven (7) copies of the foregoing "Executive Director's Exceptions to 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 sent mailed via Certified Mail, return receipt requested and via facsimile to:

Mr. Robert E. Aldrich, Jr.
Attorney at Law
1130 Fort Worth Club Tower
777 Taylor Street
Fort Worth, Texas 76102

Via CM/RRR No. **70030500000299409493** and
Via Facsimile No. (817) 336-5297

I further certify that on this day a true and correct copy of the foregoing Exceptions was electronically submitted to the Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via facsimile and hand-delivered via messenger, to:

The Honorable Roy G. Scudday
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711-3025

Via Facsimile No. (512) 475-4994 & Via Hand-Delivery

2009 MAY 14 AM 10:28
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kari L. Gilbreth
Attorney
Litigation Division
Texas Commission on Environmental Quality

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 MAY 14 PM 3:25
CHIEF CLERKS OFFICE

May 14, 2009

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Proposed Order for the Executive Director's Exceptions to Proposal for Decision
The Fort Worth Boat Club
SOAH Docket No. 582-08-2379; TCEQ Docket No. 2007-1117-MWD-E; Enf. No. 34179

Dear Ms. Castañuela:

Enclosed for filing is the Executive Director's Proposed Order to Supplement the Executive Director's Exceptions to Proposal for Decision ("Proposed Order") which was filed earlier today.

Enclosed please also find eight copies of this letter to you, and eight copies of the cover letter to Judge Scudday. Please file stamp one copy of each of these documents and return them to Kari L. Gilbreth, Attorney, Litigation Division, MC 175. If you have any questions or comments, please call me at (512) 239-1320.

Sincerely,

Kari L. Gilbreth

Kari L. Gilbreth
Attorney
Litigation Division

Enclosures

cc: The Honorable Roy G. Scudday, State Office of Administrative Hearings
Robert E. Aldrich, Attorney for The Fort Worth Boat Club, Via Facsimile No. (817) 336-5297 and Via Certified Mail Return Receipt Requested No. 70030500000299409547
Samuel Short, Enforcement Division, TCEQ, MC 149
Sid Slocum, Water Section Manager, TCEQ, MC R-4
Blas Coy, Public Interest Counsel, TCEQ, MC 103

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

TEXAS
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2009 MAY 14 PM 3:25

CHIEF CLERKS OFFICE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 14, 2009

Hand-Delivered Via Messenger and Via Facsimile No. (512) 475-4994

The Honorable Roy G. Scudday
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711

Re: Proposed Order for the Executive Director's Exceptions to Proposal for Decision
The Fort Worth Boat Club ("Proposed Order")
SOAH Docket No. 582-08-2379; TCEQ Docket No. 2007-1117-MWD-E

Dear Judge Scudday:

Please find enclosed a copy of the Executive Director's Proposed Order which was inadvertently omitted as an attachment to the Executive Director's Exceptions to Proposal for Decision which was filed with the TCEQ Chief Clerk's Office earlier today. The original Proposed Order has been filed with the TCEQ Chief Clerk.

Sincerely,

Kari L. Gilbreth

Kari L. Gilbreth
Attorney
Litigation Division

Enclosures

cc: Office of the Chief Clerk, MC 105
Robert E. Aldrich, Attorney for The Fort Worth Boat Club Via Facsimile No. (817) 336-5297 and Via Certified Mail, Return Receipt Requested No. 70030500000299409547
Samuel Short, Enforcement Division, TCEQ, MC 149
Sid Slocum, Water Section Manager, TCEQ, MC R-4
Blas Coy, Public Interest Counsel, TCEQ, MC 103

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Assessing Administrative Penalties Against
The Fort Worth Boat Club
TCEQ DOCKET NO. 2007-1117-MWD-E
SOAH DOCKET NO. 582-08-2379

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against The Fort Worth Boat Club (Respondent). Roy G. Scudday, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on April 17, 2009, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent and the Commission's Executive Director (ED).

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. On May 9, 2007, an Environmental Investigator for TCEQ conducted an investigation of Respondent's waste treatment facility located on the east side of Eagle Mountain Reservoir, approximately two miles west of FM 1120 on Boat Club Road, Fort Worth, Tarrant County, Texas.

2. At the time of the investigation, Respondent was operating the waste treatment facility and discharging waste without a valid waste discharge permit.

3. Respondent failed to submit the annual sludge report (ASR) to the Commission that was due on September 1, 2006 until July 21, 2008.

4. On June 27, 2007, the ED issued to Respondent a TCEQ Notice of Enforcement.

5. On August 15, 2007, the ED issued a proposed settlement to Respondent, which was not accepted.

6. On January 3, 2008, the ED issued the EDPRP in accordance with TEX. WATER CODE ANN. (Code) § 7.054, alleging that Respondent violated Code § 26.121(a) and 30 TEX. ADMIN. CODE (TAC) §§ 305.125(2) and (17), specifically for failing to submit the ASR for the monitoring period ending July 31, 2006, and for failing to maintain authorization to discharge wastewater. A third violation alleged in the EDPRP was subsequently withdrawn.

7. The ED recommended the imposition of an administrative penalty in the amount of $11,880.00.

8. On February 11, 2008, Respondent requested a contested case hearing on the allegations in the EDPRP.

9. On March 18, 2008, the case was referred to SOAH for a hearing.

10. On April 2, 2008, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.

11. The parties waived appearance at the preliminary hearing and the order issued April 30, 2008, stated that the ED had established jurisdiction to proceed.

12. The hearing on the merits was conducted on April 17, 2009, in Austin, Texas, by ALJ Roy G. Scudday.

13. Respondent was represented at the hearing by attorneys Robert Aldrich and Aaron Moses. The ED was represented by Kari Gilbreth and Phillip Goodwin, attorneys in TCEQ's Litigation Division.

14. The proposed penalty of $11,880.00 comprised a base penalty of $1,000.00 for failure to file the ASR violation and a base penalty of $1,000.00 for each of the eight months that Respondent had made a wastewater discharge without a valid permit, for a total base penalty of $9,000.00. There were adjustments upward of the penalty for compliance history based on one previous Notice of Violation for the same or similar violations in the past five years (a 5% enhancement), one previous Notice of Violation for different violations in the past five years (a 2% enhancement), and an Agreed Final Enforcement Order approved November 20, 2002, which did not contain a denial of liability (a 25% enhancement). The ED did not propose an adjustment downward for good faith efforts to comply.

15. The Agreed Final Enforcement Order included conclusions of law that Respondent had violated provisions of its permit, the rules, and statutes, as well as a provision that the entire assessed penalty of $3,000 be used to implement a Supplemental Environmental Project (SEP).

16. The Commission's 2002 Penalty Policy provides that, in determining the penalty enhancement for violations, agreed final enforcement orders without a denial of liability require a 25% enhancement. There is nothing in the Policy that would reduce this enhancement when such an Order includes a provision that the entire assessed penalty is to be

used to implement an SEP.

17. The Commission's 2002 Penalty Policy provides that penalty reductions for good faith efforts to complete corrective actions necessary to return the respondent to complete compliance will only be considered if the respondent has achieved compliance either before the issuance of a NOV or before the EDPRP is filed.

18. Respondent did not submit the ASR until July 2008. Although Respondent applied for a new permit on July 26, 2007, it continued to discharge without a permit until the new permit was issued on March 14, 2008. Both dates of completion compliance were subsequent to the issuance of the EDPRP.

19. An administrative penalty of $11,880.00 (the $9,000.00 base penalty plus a 32% enhancement of $2,880.00) takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Code § 7.053 and in the Commission's 2002 Penalty Policy.

II. CONCLUSIONS OF LAW

1. Under Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.

2. Under Code § 7.052, a penalty may not exceed $10,000 per violation, per day, for the violations at issue in this case.

3. Respondent is subject to the Commission's enforcement authority, pursuant to Code § 7.002.

4. As required by Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, or the

penalties and the corrective actions proposed therein.

5. As required by TEX. GOV'T CODE ANN. §§ 2001. 051(1) and 2001.052; Code § 7.058; 1 TAC § 155.27, and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties.

6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

7. Based on the above Findings of Fact, Respondent violated Code § 26.121(a) and 30 TAC § 305.125(2) and (17).

8. In determining the amount of an administrative penalty, Code § 7.053 requires the Commission to consider several factors including:

- Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
- The nature, circumstances, extent, duration, and gravity of the prohibited act;
- The history and extent of previous violations by the violator;
- The violator's degree of culpability, good faith, and economic benefit gained through the violation;
- The amount necessary to deter future violations; and
- Any other matters that justice may require.

9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

10. Based on consideration of the above Findings of Fact, the factors set out in Code § 7.053,

and the Commission's Penalty Policy, a penalty of $11,880.00 should be assessed against Respondent.

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

1. The Fort Worth Boat Club is assessed an administrative penalty in the amount of $11,880.00 for violations of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE §§ 305.125(2) and (17), and TPDES Permit No. 11123001, Sludge Provisions. The payment of this administrative penalty and The Fort Worth Boat Club'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 that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: The Fort Worth Boat Club Docket No. 2007-1117-MWD-E" to:

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

2. The 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 Commission Order.

3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

4. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

5. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.

6. 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

Buddy Garcia, Chairman
For the Commission