

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

The Honorable Thomas H. Walston
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 504
Austin, Texas 78701

Re: Lake Corpus Christi RV Park & Marina, L.L.C.
TCEQ Docket No. 2010-0737-PWS-E
SOAH Docket No. 582-11-1616

Dear Judge Walston:

Please find enclosed a copy of the "Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order" and a copy of the Proposed Order with the suggested modifications.

Sincerely,

A handwritten signature in black ink that reads "Stephanie J. Frazee".

Stephanie J. Frazee, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality
Stephanie.Frazee@tceq.texas.gov

Enclosure

cc: Blas Coy, Public Interest Counsel
Epi Villarreal, Enforcement Division
Elston Johnson, Public Drinking Water Section Manager

**SOAH DOCKET NO. 582-11-1616
TCEQ DOCKET NO. 2010-0737-PWS-E**

**EXECUTIVE DIRECTOR OF THE TEXAS
COMMISSION ON ENVIRONMENTAL
QUALITY**

Petitioner

V.

**LAKE CORPUS CHRISTI RV PARK &
MARINA L.L.C.**

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S EXCEPTIONS AND SUGGESTED MODIFICATIONS TO THE
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

NOW COMES the Executive Director, by and through his attorney, Stephanie J. Frazee, and makes the following exceptions and suggestions to modify the Administrative Law Judge's ("ALJ's") Proposed Order, pursuant to 30 TEX. ADMIN. CODE § 80.257.

1. That in Finding of Fact No. 4, "by the Commission's Corpus Christi office" be deleted from the first sentence because the investigator is located in the TCEQ Central Office.
2. That in Finding of Fact No. 4, "TEX. ADMIN. CODE" and the parentheses around "TAC" be deleted from the last sentence because the term "TAC" was defined in Finding of Fact No. 3.
3. That Finding of Fact No. 9 be changed to "On October 6, 2010, the Executive Director mailed a copy of the EDPRP to Respondent through its directors, Scott Sullivan, at 3709 Fieldcrest Lane, Bedford, Texas 76021, Corey Jensen, at 250 Boat Ramp Road, Sandia, Texas 78383, and Kelli Jensen, at 250 Boat Ramp Road, Sandia, Texas 78383."
4. That Finding of Fact No. 10 be changed to "The EDPRP was delivered to Respondent by the United States Postal Service on October 8, 2010, and October 13, 2010" to reflect the dates on which all of the certified mail green cards were signed.
5. That Conclusion of Law No. 11 be changed to "TEX. HEALTH & SAFETY CODE ANN. § 341.0315 requires the Commission to ensure public drinking water systems supply safe drinking water – see discussion of authority etc. at 30 TAC § 290.29."
6. That "§" be added before "290.122(c)(2)(B)" in Conclusion of Law No. 13.
7. That "Respondent violated" be deleted from Conclusions of Law Nos. 16 and 17.

To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these recommended modifications, the Executive Director excepts to the Proposal for Decision. A copy of the Proposed Order with the recommended modifications is attached.

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, Division Director
Litigation Division



Stephanie J. Frazee
State Bar of Texas No. 24059778
Litigation Division, MC 175
P.O. Box 13087
Austin, TX 78711
(512) 239-3693
(512) 239-3434 (FAX)

CERTIFICATE OF SERVICE
Lake Corpus Christi RV Park & Marina, L.L.C.
SOAH Docket No. 582-11-1616
TCEQ Docket No. 2010-0590737-PWS-E

I hereby certify that on August 1st, 2011, the original and 7 copies of the foregoing "Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order" ("Modifications") were 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 Modifications were sent to the following:

Via Facsimile to (512) 322-2061

The Honorable Thomas H. Walston
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

Via First Class Mail and Via Certified Mail, Return Receipt Requested

Ms. Kelli Jensen, Director
Lake Corpus Christi RV Park & Marina, L.L.C.
250 Boat Ramp Road
Sandia, Texas 78383

Article No. 7011 0470 0000 2420 8154

Via electronic mail

Blas Coy, Public Interest Counsel

Stephanie Frazee

Stephanie J. Frazee
Attorney
Litigation Division
Texas Commission on Environmental Quality

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Assessing Administrative Penalties Against
and Requiring Corrective Action by Lake
Corpus Christi RV Park & Marina, L.L.C.;
TCEQ Docket No. 2010-0737-PWS-E;
SOAH Docket No. 582-11-1616

On _____, 2011, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Lake Corpus Christi RV Park & Marina, L.L.C. (Respondent). A Proposal for Decision (PFD) was presented by Thomas H. Walston, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a public hearing concerning the EDPRP on May 26, 2011.

After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Respondent owns and operates a motel and RV park with a water system that provides water for human consumption, located at 250 Boat Ramp Road, Sandia, Live Oak County, Texas (the Facility).
2. The Facility has water service connections for 21 RV sites, ten motel rooms, three cabins, a restaurant, and a clubhouse.

3. The Facility has at least 15 service connections and qualifies as a public water system (PWS) as defined in 30 TEX. ADMIN. CODE (TAC) § 290.38(66).
4. During a record review conducted on March 1, 2010, a TCEQ Public Water Supply Program investigator documented that Respondent failed to collect routine distribution samples for coliform analysis and failed to provide public notice of the failure to sample for the months of November 2008, and April, June, and August 2009. The investigator concluded that Respondent had violated TEX. HEALTH & SAFETY CODE ANN. § 341.033(d) and 30 TAC §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B).
5. On October 6, 2010, the Executive Director filed the Executive Director's Preliminary Report and Petition (EDPRP), in accordance with TEX. HEALTH & SAFETY CODE ANN. § 341.049(c), alleging that Respondent failed to collect routine distribution samples for coliform analysis and failed to provide public notice of the failure to sample for the months of November 2008, April 2009, June 2009, and August 2009, in violation of TEX. HEALTH & SAFETY CODE ANN. § 341.033(d) and 30 TAC §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B).
6. The Executive Director recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$1,681 against and requiring corrective action by Respondent.
7. The total proposed administrative penalty consists of a \$1,000 base penalty; a \$550 enhancement based on Respondent having six previous Notices of Violations (NOVs) containing the same or similar violations; and a \$131 enhancement based on Respondent's avoided costs of compliance.
8. The Executive Director recommended that Respondent be required to implement corrective measures to begin complying with applicable coliform monitoring requirements; to implement procedures to ensure that all necessary public notifications are provided in a timely manner to customers of the water system; and to submit written certification and supporting documentation to demonstrate compliance.

9. On October 6, 2010, the Executive Director mailed a copy of the EDPRP to Respondent through its directors, Scott Sullivan, at 3709 Fieldcrest Lane, Bedford, Texas 76021, Corey Jensen, at 250 Boat Ramp Road, Sandia, Texas 78383, and Kelli Jensen, at 250 Boat Ramp Road, Sandia, Texas 78383.”
10. The EDPRP was delivered to Respondent by the United States Postal Service on October 8, 2010, and October 13, 2010.
11. Respondent filed an answer to the EDPRP on October 14, 2010.
12. On November 24, 2010, the Executive Director requested the matter be referred to SOAH for hearing.
13. On January 3, 2011, the TCEQ Chief Clerk mailed notice of the scheduled preliminary hearing to Respondent.
14. The notice of hearing:
 - Indicated the time, date, place, and nature of the hearing;
 - Stated the legal authority and jurisdiction for the hearing;
 - Indicated the statutes and rules the Executive Director alleged Respondent violated.

 - Advised Respondent, in at least twelve-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and EDPRP being deemed as true and the relief sought in the notice possibly being granted by default; and

 - Included a copy of the Executive Director’s penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.
15. On February 3, 2011, the ALJ convened the preliminary hearing as scheduled. The Executive Director and Respondent appeared at the preliminary hearing, and a procedural schedule was adopted leading to a hearing on the merits on May 26, 2011.
16. The hearing on the merits convened on May 26, 2011, as scheduled. Attorney Stephanie Frazee represented the Executive Director, and Ms. Kelli Jensen represented Respondent. The record closed at the conclusion of the hearing that day.

17. Respondent did not collect routine distribution samples for coliform analysis for the months of November 2008, and April, June, and August 2009.
18. Respondent did not provide public notice of its failure to sample for coliform analysis for the months of November 2008, and April, June, and August 2009.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. WATER CODE § 5.013 and TEX. HEALTH & SAFETY CODE ANN. § 341.049.
2. 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.
3. Under TEX. HEALTH & SAFETY CODE ANN. § 341.049, the Commission may assess an administrative penalty against a person who violates a provision of Subchapter C of the Texas Health and Safety Code, or a rule or order adopted thereunder.
4. Under TEX. HEALTH & SAFETY CODE ANN. § 341.049, the penalty may not exceed \$1,000 per violation, and each day of a continuing violation may be considered a separate violation.
5. As required by TEX. HEALTH & SAFETY CODE ANN. § 341.049(d) 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 proposed therein.
6. As required by TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052; TEX. HEALTH & SAFETY CODE ANN. § 341.049(g); 1 TAC §§ 155.401 and 155.501; and 30 TAC §§ 1.11 and 39.25, Respondent was notified of the hearing on the alleged violations and the proposed penalties.

7. 30 TAC § 290.38(66) defines “public water system” as a system for providing the public water for human consumption through pipes or other conveyances. The system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year.
8. “Connection” is defined at 30 TAC § 290.38(15) as a single-family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system.
9. TEX. HEALTH & SAFETY CODE § 341.033(d) provides that the owner or manager of a water supply system that furnishes drinking water to less than 25,000 people shall submit to the Commission during each month of the system’s operation at least one specimen of water taken from the supply for bacteriological analysis.
10. TEX. HEALTH & SAFETY CODE ANN. § 341.031 authorizes the Commission to adopt and enforce rules to implement the federal Safe Drinking Water Act.
11. TEX. HEALTH & SAFETY CODE ANN. § 341.0315 requires the Commission to ensure public drinking water systems supply safe drinking water – see discussion of authority etc. at 30 TAC § 290.39.
12. 30 TAC § 290.109(c)(2)(A)(i) requires a non-community PWS serving a population of less than 1,000 to perform routine distribution coliform sampling at least once per month.
13. 30 TAC § 290.122(c)(2)(B) requires the operator of a PWS who fails to perform required water monitoring to notify persons served by the system of the failure to perform the required monitoring. For systems, such as Respondent’s, which serve persons who do not regularly pay water bills or who do not have service connection addresses, the notice must be provided by a method reasonably calculated to reach such persons for at least seven days or as long as the violation exists.
14. Respondent’s system qualified as a PWS under the definition at 30 TAC § 290.38(66).
15. Respondent violated TEX. HEALTH & SAFETY CODE ANN. § 341.033(d).

16. Respondent violated 30 TAC § 290.109(c)(2)(A)(i).
17. Respondent violated 30 TAC § 290.122(c)(2)(B).
18. In determining the amount of an administrative penalty, TEX. HEALTH & SAFETY CODE ANN. § 341.049(b) requires the Commission to consider several factors including:
 - The nature, circumstances, extent, duration, and gravity of the prohibited acts;
 - 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.
19. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
20. Based on consideration of the above Findings of Fact, the factors set out in TEX. HEALTH & SAFETY CODE ANN. § 341.049(b), and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for the alleged violations and a total administrative penalty of \$1,681 is justified and 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. Lake Corpus Christi RV Park & Marina L.L.C. (Respondent) is assessed an administrative penalty of \$1,681 for its violations of TEX. HEALTH & SAFETY CODE ANN. § 341.033(d) and 30 TAC §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B). The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order. 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: Lake Corpus Christi RV Park & Marina, L.L.C., Docket No. 2010-0737-PWS-E" to:

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

2. Within 10 days after the effective date of this Order, Respondent shall begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TAC § 290.109. This provision will be satisfied upon six consecutive months of compliance monitoring and reporting.
3. Within 30 days after the effective date of this Order, Respondent shall implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the water system, in accordance with 30 TAC § 290.122.
4. Within 180 days after the effective date of this Order, Respondent shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions No. 2 and 3. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be sent to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

with a copy to:

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

5. 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 one or more of the terms or conditions in this Commission Order.
6. 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.
7. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
8. As required by TEX. HEALTH & SAFETY CODE ANN. § 341.049(h), the Commission's Chief Clerk shall forward a copy of this Order to Respondent.

9. 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

Bryan W. Shaw, Chairman
For the Commission