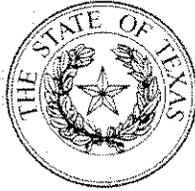


# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

July 20, 2011

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

Re: SOAH Docket No. 582-11-1616; TCEQ Docket No. 2010-0737-PWS-E;  
In Re: In the Matter of an Enforcement Action Against Lake Corpus  
Christi RV Park & Marina, L.L.C. RN101254266

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **August 9, 2011**. Any replies to exceptions or briefs must be filed in the same manner no later than **August 19, 2011**.

This matter has been designated **TCEQ Docket No. 2010-0737-PWS-E ; SOAH Docket No. 582-11-1616**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink that reads "Thomas H. Walston".

Thomas H. Walston  
Administrative Law Judge

THW:nl  
Enclosures  
cc: Mailing List

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**AUSTIN OFFICE**

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Austin, Texas 78701  
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**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** LAKE CORPUS CHRISTI RV PARK & MARINA  
**SOAH DOCKET NUMBER:** 582-11-1616  
**REFERRING AGENCY CASE:** 2010-0737-PWS-E

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ WILLIAM G. NEWCHURCH**

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**REPRESENTATIVE / ADDRESS**

**PARTIES**

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LAKE CORPUS CHRISTI RV PARK & MARINA

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

<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>ENFORCEMENT ACTION AGAINST</b>	<b>§</b>	
<b>LAKE CORPUS CHRISTI RV PARK &amp;</b>	<b>§</b>	<b>OF</b>
<b>MARINA, L.L.C. RN101254266</b>	<b>§</b>	
	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) brought this enforcement action against Lake Corpus Christi RV Park & Marina L.L.C. (Respondent). The ED alleged that Respondent failed to collect routine distribution water samples from its public water system (PWS) for coliform analysis during the months of November 2008 and April, June, and August 2009, and that Respondent did not provide public notice to its customers of these failures to perform the required monitoring. As a result, the ED asserted that Respondent violated TEX. HEALTH & SAFETY CODE (THSC) § 341.033(d) and 30 TEX. ADMIN. CODE (TAC) §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B). The ED sought an administrative penalty of \$1,681 as well as corrective actions. Respondent argued that its facility is a “tourist court” and its system is not a PWS, so the THSC section and Commission regulations relied upon by the ED do not apply.

The evidence established that Respondent’s water system qualified as a PWS; that Respondent violated the THSC and rules as alleged by the ED; and that the requested penalty is appropriate. Therefore, the Administrative Law Judge (ALJ) recommends that the Commission find that the violations occurred, assess an administrative penalty of \$1,681, and require Respondent to complete the corrective action requested by the ED.

## II. PROCEDURAL HISTORY

Administrative Law Judge (ALJ) Thomas H. Walston convened the hearing on the merits on May 26, 2011, at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff Attorney Stephanie Frazee represented the ED, and Ms. Kelli Jensen represented Respondent. The record closed at the conclusion of the hearing that day. Undisputed procedural facts are set out in Findings of Fact in the attached Proposed Order.

## III. DISCUSSION

### A. Overview

Lake Corpus Christi RV Park & Marina is located on the shore of Lake Corpus Christi in Live Oak County. Mr. Corey Jensen and Ms. Kelli Jensen acquired the facility in 2006. The facility is a 26-acre resort with 21 RV sites, ten motel rooms, three cabins, a restaurant, and a clubhouse. Each of these has a connection for water supplied by Respondent's water system. This system has two wells and uses hypo-chlorination to disinfect the water. Well No. 1 (28 gpm) discharges into the distribution system through one 400-gallon pressure tank. Well No. 2 (18 gpm) discharges into the distribution system through one 85-gallon pressure tank.

In early 2010, the TCEQ Corpus Christi office flagged Respondent's water system because the TCEQ had not received records of water sampling of Respondent's water system for the months of November 2008 and April, June, and August 2009. Likewise, the TCEQ had not received evidence that Respondent posted public notice of these failures to sample. As a result, a TCEQ investigator inspected Respondent's facility on July 19, 2010, to determine if it qualified as a PWS that was required to submit monthly water samples. The investigator concluded that Respondent's system did qualify as a PWS, and this enforcement action ensued.

Respondent noted that two water samples were collected during March 2009, and it requested that one of these be credited for April 2009. Otherwise, Respondent did not dispute that the water samples were not collected or that public notices were not posted, as alleged by the ED. However, Respondent did argue that its water system should not be considered a PWS and that the regulations requiring routine testing should not apply.

**B. Applicable Law**

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. “Connection” is defined at § 290.38(15) as a single-family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system.

THSC § 341.033(d) requires the owner or manager of a water supply system that furnishes drinking water to less than 25,000 people to submit to the Commission during each month of the system’s operation at least one specimen of water for bacteriological analysis. Likewise, 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.

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.

THSC § 341.066(a)(2) requires “tourist courts” to sample and test their water for bacteriological analysis once each year before May 1. THSC § 341.001(10) defines “tourist court” as

a camping place or group of two or more mobile or permanent housing units operated as rental property for the use of transient trade or trailer units housing humans.

**C. Executive Director's Evidence**

The ED introduced documentary evidence and called three witnesses: Keith Allen Ladner, Sally Paramo, and Epifanio Villarreal.

Keith Allen Ladner: Mr. Ladner is an environmental investigator for the TCEQ Corpus Christi region. He holds a B.S. degree in biology and chemistry, and he has worked for the TCEQ for thirteen years. Mr. Ladner investigated the Respondent's facility pursuant to the Commission's policies and procedures, and he prepared a report on his findings.

Mr. Ladner explained that he conducted a focused investigation on July 19, 2010, to determine whether Respondent operated a PWS. The inspection occurred after a Notice of Enforcement letter was sent to the facility concerning bacteriological monitoring violations. He observed that Respondent operated a 26-acre resort facility that included 21 RV sites, ten motel rooms, three cabins, a restaurant, and a clubhouse. Each of these had a water connection and all were supplied by Respondent's water system. Mr. Ladner stated that, based on the number of connections alone, Respondent's facility qualified as a PWS. Mr. Ladner also stated that Respondent's facility served people year-round, and some full-time residents lived in the motel rooms, which were being converted to apartments. However, Mr. Ladner explained that in determining whether the facility is a PWS, it does not matter if some of the connections are not in use.

When Mr. Ladner conducted his inspection, he observed 10 to 12 RVs in the facility and three cabins appeared occupied. Ms. Jensen told him that six full time residents lived in the cabins and six temporary residents were in the motel rooms. She also told him that the restaurant was

closed during June 2010. Based on his inspection, Mr. Ladner concluded that the status of the facility should remain as an active PWS.

Mr. Ladner testified that a PWS the size of Respondent's must sample for bacteriological testing (total coliform) at least once per month and must test for chlorine residuals at least once per seven days. He noted that Respondent's resort is classified as a transient/non-community facility because it serves different people day-by-day. However, it still has the same sampling requirements as other systems of equal size.

On cross-examination Mr. Ladner explained that he obtained his information during his on-site inspection of the facility, as well as from Ms. Jensen, Respondent's web page, and historical data. He was not aware of any exemption from PWS status that applied to Respondent's facility. In addition, he stated that many RV parks like Respondent's qualify as a PWS.

Sally Paramo: Ms. Paramo has worked for the TCEQ for over 38 years, and she has worked as a natural resource specialist investigator since 2003. Ms. Paramo primarily works on enforcement cases related to water sampling, and she estimated that she handles more than 100 cases per year.

Ms. Paramo said that the TCEQ Corpus Christi office flagged Respondent's facility because TCEQ did not receive a record of some water samples from Respondent and because it appeared that multiple violations had occurred. She investigated the case pursuant to Commission policies and guidelines. Her investigation involved reviewing data bases, checking with the testing lab, and checking Respondent's compliance history.

Based on her research, Ms. Paramo prepared an enforcement action referral dated April 23, 2010. This showed that Respondent failed to collect routine monitoring samples in November 2008, April 2009, June 2009, and August 2009. Likewise, it showed that Respondent did not post public notice during each month following the failure to collect routine monitoring samples: December

2008, May 2009, July 2009, and September 2009. In Ms. Paramo's opinion, these violations constituted significant noncompliance. Her report also noted that this PWS was last inspected in September 2004, after which an enforcement action was initiated for similar violations.

Ms. Paramo stated that bacteria in water can be a health hazard, so failure to sample and test is a significant violation. She explained that sampling must be conducted each calendar month. Therefore, even though Respondent took two samples during March 2009, the second March sample could not be considered as a sample for April 2009. She also noted that the rules require an operator to send to the ED a copy of the operator's notice to customers when it fails to sample as required. In this case, Respondent did not send a copy of any such notice to the ED.

On cross-examination, Ms. Paramo agreed that Respondent's failure to test was not malicious. She also explained that Respondent was not being charged with any violations committed by the prior owner. Respondent acquired the facility in 2006, but the first alleged violation is for November 2008.

Epifanio Villarreal: Mr. Villarreal has worked as a TCEQ enforcement coordinator for five years. He works primarily on PWS cases, and he calculated the penalty and processed the enforcement order for this case. Based on the penalty calculation worksheet and the Commission's rules, he determined that a \$1,681 penalty was appropriate. For corrective action, Mr. Villarreal stated that Respondent should be required to conduct routine sampling and to implement procedures to ensure that required public notice is given when samples are not taken. These requirements would be considered satisfied upon six consecutive months of proper compliance monitoring and reporting.

#### D. Respondent's Evidence

Respondent offered documentary evidence and testimony from Ms. Kelli Ann Jensen.

Kelli Ann Jensen: Ms. Jensen and her husband own the Lake Corpus Christi RV Park & Marina, and they are the only permanent residents at the facility. They live in an RV, which she does not believe should be considered a residential dwelling.

In Ms. Jensen's opinion, the facility's water system is not a PWS. She stated that the facility is an RV park that primarily serves weekenders, and she questioned whether the RV hookups qualified as "connections" for the purpose of determining whether the system is a PWS, because RVs connect to the water supply by hoses rather than by pipes. Further, she contended that RVs should be considered as motor vehicles and not as residential dwellings. Ms. Jensen stated that usually only one or two people stay in each motel room/apartment, so she questioned Mr. Ladner's estimate of the number of people served by the system. She added that the restaurant is only open one or two days each week, and the motel was leased to oil-field workers.

Ms. Jensen argued that the rules cited by Staff should not apply to her facility. She cited 30 TAC § 290.102, which describes the general applicability of subchapter F of chapter 290 of the Commission's rules on drinking water quality. Alternatively, she contended that the facility should be considered a "tourist court" under THSC § 341.066, which requires water samples to be submitted only once per year.

Ms. Jensen also testified that her RV park was essentially closed twice during the time in question. From May 2009 – December 1, 2009, the restaurant was closed for remodeling, and other business was almost non-existent due to the poor economy. She also closed the restaurant in June 2010, and the motel was empty for almost all of 2010, except for one unit. As a result, she claimed that during these times the RV park was empty and only one room had an occupant, so she

questioned whether sampling was even required. During these times, Respondent was also remodeling to convert the motel rooms into apartments.

Finally, Ms. Jensen complained that her water system is over-regulated. She must deal with the TCEQ, the Lower Colorado River Authority, and the Texas Department of Health. Expenses include more than \$2,000 in annual fees plus testing. In her opinion, a new category should be established for RV-park water systems. Alternatively, she again suggested that the facility should be categorized as a tourist court, which requires only yearly testing.

#### **E. ALJ's Analysis and Recommendation**

The evidence established that Respondent did not collect routine distribution water samples from its water system for coliform analysis during the months of November 2008 and April, June, and August 2009, and that Respondent did not provide public notice to its customers of these failures to monitor its water. Indeed, other than suggesting that a second sample taken during late March 2009 should count for testing in April, Respondent did not dispute that it did not sample and test during these months and did not provide notice to its customers. Respondent did argue, however, that its water system does not qualify as a PWS for which monthly monitoring is required. Therefore, the issue is whether Respondent's water system qualifies as a PWS.

Respondent's facility has 21 RV sites, ten motel rooms, three cabins, a restaurant, and a clubhouse. A PWS is defined by 30 TAC § 290.38(66) as a system for providing the public water for human consumption with at least 15 service connections or which serves at least 25 individuals at least 60 days out of the year. The evidence was vague on how many individuals are actually served by Respondent's system. However, a system can qualify as a PWS based on either the number of connections or the number of individuals served, and the evidence was definite that Respondent's system had at least 15 service connections, which qualified it as a PWS.

Connections include single-family residential units and commercial and industrial establishments to which drinking water is supplied. Respondent questioned whether RV hookups should be considered as residential units, but the ALJ finds that they should. The purpose of an RV is to provide habitation, either short term or long term. This was confirmed by Ms. Jensen's testimony that she and her husband live in their RV full time. Further, even without counting the RV hookups, Respondent's system still had 15 service connections (ten motel rooms, three cabins, a restaurant, and a clubhouse). Therefore, Respondent's system qualified as a PWS under the definition at 30 TAC § 290.38(66).

Although Respondent's water system qualified as a PWS, the question remains how often Respondent was required to sample and test. 30 TAC § 290.109(c)(2) requires non-community public water systems with a population of less than 1,000 to monitor for microbial contaminants not less than once per month. The rule makes no distinction on sampling frequency between transient and non-transient non-community public water systems.

Respondent argued that her facility is a tourist court and that THSC § 341.066(a)(2) should govern. That statute requires tourists courts to sample and test their water for bacteriological analysis only once each year before May 1. The ALJ concludes that the once yearly sampling requirement of section 341.066(a)(2) does not exempt Respondent from the more frequent sampling requirements of 30 TAC Chapter 290. THSC § 341.066 is contained within Subchapter D of Chapter 341. That subchapter addresses the safety and general sanitation standards of facilities used by the public, such as toilet facilities, public buildings, swimming pools, school buildings, tourist courts, and the like. Section 341.066, which specifically deals with tourist courts, concerns sewage disposal, general sanitation, gas supplies for cooking and heating, food, appliances, and other matters, in addition to the water supply used for the general conduct of the tourist court.

In contrast, the Commission's rules in 30 TAC Chapter 290 specifically concern safe drinking water, and those rules are based on THSC § 341.031(a), which authorizes the Commission

to adopt and enforce rules to implement the federal Safe Drinking Water Act.<sup>1</sup> Further, THSC § 341.0315 requires the Commission to ensure public drinking water systems supply safe drinking water, and both THSC §§ 341.031 and 341.0315 are contained in Chapter 341, Subchapter C, which deals specifically with drinking water and protection of public water supplies.

Thus, when THSC Chapter 341 is considered in context and in its entirety, it is clear that the safe drinking water requirements of Subchapter C and 30 TAC Chapter 290 apply in addition to the general sanitation standards of Chapter 341, Subchapter D. In other words, the once yearly sampling requirement of § 341.066(a)(2) for tourist courts does not pre-empt or replace the drinking water sampling requirements of 30 TAC Chapter 290. Therefore, even assuming Respondent's facility qualifies as a tourist court, the Commission's rule at 30 TAC § 290.109(c)(2)(A)(i), which requires monthly sampling and testing of water at Respondent's PWS, applies in addition to the once yearly sampling requirement of THSC § 341.066(a)(2) for tourist courts.

#### IV. SUMMARY

The evidence established that Respondent failed to collect routine distribution water samples from its PWS for coliform analysis during the months of November 2008 and April, June, and August 2009, and that Respondent did not provide public notice to its customers during the month following each of these failures to monitor. As a result, Respondent violated THSC § 341.033(d) and 30 TAC §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B). The evidence also established that the \$1,681 administrative penalty and the corrective action requested by the ED are appropriate.

Therefore, the ALJ recommends that the Commission adopt the Findings of Fact and Conclusions of Law appearing in the Proposed Order, assess a \$1,681 administrative penalty against

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<sup>1</sup> 30 TAC § 290.39 cites THSC Chapter 341 as authority for the requirements contained in 30 TAC Chapter 290. THSC § 341.031(a) provides: "Public drinking water must be free from deleterious matter and must comply with the standards established by the commission or the United States Environmental Protection Agency. The commission may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.)."

Respondent, and require Respondent to conduct required routine bacteriological sampling of its water supply and to implement procedures to ensure that required public notice is given when samples are not taken.

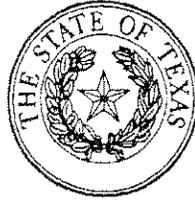
SIGNED July 20, 2011.



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THOMAS H. WALSTON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

# 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 by the Commission's Corpus Christi office 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 TEX. ADMIN. CODE (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 director, Scott Sullivan, at 3709 Fieldcrest Lane, Bedford, Texas 76021.
10. The EDPRP was delivered to Respondent by the United States Postal Service on 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 Respondent violated 30 TAC § 290.109(c)(2)(A)(i).
17. Respondent violated 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

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**Bryan W. Shaw, Chairman**  
**For the Commission**