

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 20, 2012

The Honorable Anne Perez
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Room 504
Austin, Texas 78701

Re: Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order;
TCEQ Docket Nos. 2011-0416-UTL-E and 2011-0417-UTL-E;
SOAH Docket No. 582-10-2876

Dear Judge Perez:

Enclosed is a true and correct copy of the Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order (the "Exceptions").

The original of the Exceptions was filed with the Office of the Chief Clerk of the Texas Commission on Environmental Quality on this day.

Sincerely,

A handwritten signature in cursive script that reads "Peipey Tang".

Peipey Tang
Attorney
Litigation Division

Enclosure

cc: Mr. Stephen Krebs, 11700 Padok Rd., Houston, Texas, 77044 and 11015 Sheldon Rd. Suite 102, Houston, Texas, 77044
Mr. Blas Coy, Public Interest Counsel, TCEQ (via electronic mail)

**SOAH DOCKET NO. 582-12-2876
TCEQ DOCKET NO. 2011-0416-UTL-E**

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; Petitioner	§	BEFORE THE
	§	
	§	
VS.	§	STATE OFFICE OF
	§	
	§	
KREBS UTILITIES, INC. DBA PADOK TIMBERS SUBDIVISION WS; Respondent	§	ADMINISTRATIVE HEARINGS

**SOAH DOCKET NO. 582-12-2876
TCEQ DOCKET NO. 2011-0417-UTL-E**

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; Petitioner	§	BEFORE THE
	§	
	§	
VS.	§	STATE OFFICE OF
	§	
	§	
KREBS UTILITIES, INC. DBA K ESTATES; Respondent	§	ADMINISTRATIVE HEARINGS

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

NOW COMES, the Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") and hereby files these Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order, pursuant to 30 TEX. ADMIN. CODE § 80.257.

I. Suggested Modifications

The Executive Director agrees with and supports the adoption of the majority of the Administrative Law Judge's ("ALJ") findings and conclusions. The Executive Director's suggested modifications are intended to clarify provisions of the Proposed Order and to correct typographical errors.

The Executive Director recommends the following modifications:

1. The Executive Director recommends that the last sentence in the introductory paragraph be modified by replacing "a n evidentiary" with "an evidentiary".
2. The Executive Director recommends that Finding of Fact No. 7 be modified by replacing "water services" with "water services at both Padok Timbers and K Estates".

The Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order
Krebs Utilities, Inc. d/b/a Padok Timbers Subdivision WS and d/b/a K Estates Water System
Page 2

3. The Executive Director recommends that Finding of Fact No. 9 be modified by replacing "ED" with "Executive Director (ED)".
4. The Executive Director recommends that Finding of Fact No. 9 be modified by replacing "EPP" with "emergency preparedness plan (EPP)".
5. The Executive Director recommends that Finding of Fact No. 13 be modified by replacing "PWSs" with "public water systems (PWSs)".
6. The Executive Director recommends that Finding of Fact No. 14 be modified by replacing "unduly burden Respondent's customers" with "not unduly financially burden Respondent's customers." This change is recommended to clarify that the burden is on Respondent to show that the EPP will cause a significant financial burden on Respondent's customers.
7. The Executive Director recommends that Finding of Fact No. 15 be modified by replacing "Tex. Health & Safety Code § 341.049(c)" with "Tex Water Code § 13.4151(c)". The alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is a violation of chapter 13 of the Texas Water Code, adopted to protect the public interest inherent in the rates and services of retail public utilities.
8. The Executive Director recommends that Finding of Fact No. 15 be modified by replacing "290.39(0)(1)" with "290.39(o)(1)".
9. The Executive Director recommends that Finding of Fact No. 15 be modified by replacing "both Respondent's water systems" with "both of Respondent's water systems".
10. The Executive Director recommends that Finding of Fact No. 17.b. be modified by replacing "could, but did not actually, cause major harm to human health" with "was categorized as a major programmatic violation". This change is recommended because the standard of potential harm to human health applies to the Environmental, Property, and Human Health Matrix rather than the Programmatic Matrix, which is the matrix that applies to this violation.
11. The Executive Director recommends that Finding of Fact No. 17.b. be modified by replacing "10% reduction" with "10% adjustment". This change is recommended because the penalty is adjusted by 10%, which is a 90% reduction.
12. The Executive Director recommends that Findings of Fact No. 17.c. be modified by replacing "10 different months" with "13 different months". This change is recommended because the time period of the violation, March 1, 2010, through March 17, 2010, equals 381 days, or 13 months under the TCEQ Penalty Policy.
13. The Executive Director recommends that Finding of Fact No. 18.b. be modified by replacing "could, but did not actually, cause major harm to human health" with "was categorized as a major programmatic violation". This change is recommended because the standard of potential harm to human health applies to the Environmental, Property, and Human Health Matrix rather than the Programmatic

Matrix, which is the matrix that applies to this violation.

14. The Executive Director recommends that Finding of Fact No. 18.b. be modified by replacing "10% reduction" with "10% adjustment". This change is recommended because the penalty is adjusted by 10%, which is a 90% reduction.
15. The Executive Director recommends that Findings of Fact No. 18.c. be modified by replacing "10 different months" with "13 different months". This change is recommended because the time period of the violation, March 1, 2010, through March 17, 2010, equals 381 days, or 13 months under the TCEQ Penalty Policy.
16. The Executive Director recommends that Findings of Fact No. 18.e. be modified by replacing "Notice of Violation (NOV)" with "NOV".
17. The Executive Director recommends that Finding of Fact No. 18.e. be modified by replacing "\$163.00.00" with "\$163.00)".
18. The Executive Director recommends that Finding of Fact No. 21 be modified by replacing "September 30, 2011" with "October 3, 2011". This change is recommended because September 30, 2011, is the date of Respondent's letter requesting a hearing, but October 3, 2011, is the date the answer was filed with the TCEQ Chief Clerk's Office. An answer must be filed with the TCEQ Chief Clerk's Office in order to properly request a hearing under 30 TEX. ADMIN. CODE § 70.105.
19. The Executive Director recommends that Finding of Fact No. 23 be modified by replacing "February 3, 2012" with "December 12, 2011". This change is recommended because December 12, 2011, is the date that the notice of hearing was mailed.
20. The Executive Director recommends that Finding of Fact No. 26 be modified by replacing "ten-month" with "thirteen-month". This change is recommended because the time period of the violation, March 1, 2010, through March 17, 2010, equals 381 days, or 13 months under the TCEQ Penalty Policy.
21. The Executive Director recommends that Finding of Fact No. 28 be modified by replacing "entered on June 26, 2007" with "with an effective date of May 25, 2007". This change is recommended because the Order was signed on May 9, 2007, and mailed on May 22, 2007; under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142(c), the effective date of an order is three days after it is mailed.
22. The Executive Director recommends that Finding of Fact No. 29 be modified by replacing "returned to" with "achieved".
23. The Executive Director recommends that Finding of Fact No. 30 be modified by replacing "7.053" with "13.4151". The factors in determining the amount of the administrative penalty listed in Tex. Water Code § 13.4151 apply since the alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code.

24. The Executive Director recommends that Conclusion of Law No. 1 be modified by replacing "Tex. Health & Safety Code § 341.049" with "Tex. Water Code § 13.4151". Tex. Water Code § 13.4151 provides the Commission with jurisdiction to assess a penalty against a person, affiliated interested, or entity in violation of chapter 13 of the Texas Water Code. The alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code.
25. The Executive Director recommends that Conclusion of Law No. 3 be modified by replacing "Tex. Health & Safety Code § 341.049" with "Tex Water Code § 13.4151". Tex. Water Code § 13.4151 provides the Commission with jurisdiction to assess a penalty against a person, affiliated interested, or entity in violation of chapter 13 of the Texas Water Code. The alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code.
26. The Executive Director recommends that Conclusion of Law No. 3 be modified by replacing "subchapter C of the Texas Health and Safety Code" with "chapter 13 of the Tex. Water Code". The alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is a violation of chapter 13 of the Texas Water Code.
27. The Executive Director recommends that Conclusion of Law No. 4 be modified by replacing "Tex. Health & Safety Code § 341.049" with "Tex Water Code § 13.4151". Tex. Water Code § 13.4151 provides the Commission with jurisdiction to assess a penalty against a person, affiliated interested, or entity in violation of chapter 13 of the Texas Water Code. The alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code.
28. The Executive Director recommends that Conclusion of Law No. 4 be modified by replacing "1,000" with "500". Tex. Water Code § 13.4151 applies to the administrative penalty since the alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code. The maximum penalty under Tex. Water Code § 13.4151 may not exceed \$500 a day.
29. The Executive Director recommends that Conclusion of Law No. 5 be modified by replacing "Tex. Health & Safety Code § 341.049(d)" with "Tex Water Code § 13.4151(d)". The notice requirement under Tex. Water Code § 13.4151 applies because the alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code.
30. The Executive Director recommends that Conclusion of Law No. 6 be modified by replacing "Tex. Health & Safety Code § 341.049(g)" with "Tex Water Code § 13.4151(g)". Tex. Water Code § 13.4151 applies because the alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code.

31. The Executive Director recommends that Conclusion of Law No. 9 be modified by replacing "30 TAC § 290.39(0)(1)" with "30 TAC § 290.39(o)(1)".
32. The Executive Director recommends that Conclusion of Law No. 12 be modified by replacing "both Respondent's water systems" with "both of Respondent's water systems"
33. The Executive Director recommends that Conclusion of Law No. 12 be modified by deleting the comma after Tex. Water Code § 13.1395(b)(2).
34. The Executive Director recommends that Conclusion of Law No. 13 be modified by replacing "Tex. Health & Safety Code § 341.049(b)" with "Tex Water Code § 13.4151(b)". The factors in determining the amount of the administrative penalty listed in Tex. Water Code § 13.4151 apply since the alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code.
35. The Executive Director recommends that Conclusion of Law No. 13 be modified by replacing "prohibited acts" with "prohibited acts or omissions".
36. The Executive Director recommends that Conclusion of Law No. 15 be modified by replacing "Tex. Health & Safety Code § 341.049(b)" with "Tex Water Code § 13.4151(b)". The factors in determining the amount of the administrative penalty listed in Tex. Water Code § 13.4151 apply since the alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code.
37. The Executive Director recommends that Ordering Provision No. 1 be modified by replacing "Krebs Utilities, Inc. dba Padok Timbers Subdivision WS and dba K Estates Water System (Respondent)" with "Respondent".
38. The Executive Director recommends that Ordering Provision No. 1 be modified by deleting the comma after Tex. Water Code § 13.1395(b)(2).
39. The Executive Director recommends that Ordering Provision No. 5 be modified by replacing "Tex. Health & Safety Code § 341.049(h)" with "Tex Water Code § 13.4151(h)". The notice requirement listed in Tex. Water Code § 13.4151 applies because the alleged violation for failing to adopt and submit an Emergency Preparedness Plan to the Executive Director by March 1, 2010, is located in chapter 13 of the Texas Water Code.

II. 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.

WHEREFORE, the Executive Director suggests the incorporation of these modifications into the Proposed Order before its consideration by the Commission. To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these

**The Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's
Proposed Order
Krebs Utilities, Inc. d/b/a Padok Timbers Subdivision WS and d/b/a K Estates Water System
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recommended modifications, the Executive Director excepts to the Proposal for Decision. A copy of the Proposed Order with the recommended modifications is hereby included as Attachment A.

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar
Executive Director

Caroline M. Sweeney, Deputy Director
Office of Legal Services

Kathleen C. Decker, Division Director
Litigation Division

Peipey Tang

by _____

Peipey Tang
State Bar of Texas No. 24060699
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-0654
(512) 239-3434 (FAX)
Peipey.Tang@tceq.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2012, an original and seven (7) copies of the foregoing "Executive Director's Exceptions and Suggested Modifications to the Administrative Law Judge's Proposed Order" ("Exceptions") 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 Exceptions was mailed via Certified Mail, Return Receipt Requested, Article No. 7004 1350 0002 7549 5086, and via First Class Mail, postage prepaid, to:

Stephen P. Krebs
Chief Executive Officer
Krebs Utilities, Inc. d/b/a Padok Timbers Subdivision WS
Krebs Utilities, Inc. d/b/a K Estates Water System
11700 Padok Rd.
Houston, Texas 77044

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 7549 5093, and via First Class Mail, postage prepaid, to:

Stephen P. Krebs
Chief Executive Officer
Krebs Utilities, Inc. d/b/a Padok Timbers Subdivision WS
Krebs Utilities, Inc. d/b/a K Estates Water System
11015 Sheldon Rd. Suite 102
Houston, Texas 77044

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent electronically to:

The Honorable Anne Perez
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Room 504
Austin, Texas 78701

I further certify that on this day a true and correct copy of the foregoing Exceptions was sent via electronic mail to Mr. Blas Coy, Jr., Attorney, Office of the Public Interest Counsel, Texas Commission on Environmental Quality.



Peipey Tang
Attorney
Litigation Division
Texas Commission on Environmental Quality

Attachment A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER
Assessing Administrative Penalties against
KREBS UTILITIES, INC. D/B/A
PADOK TIMBERS SUBDIVISION WS and K ESTATES WATER SYSTEM
TCEQ DOCKET NO. 2011-0416-UTL-E and 2011-0417-UTL-E
SOAH DOCKET NO. 582-12-2876 (CONSOLIDATED)

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petitions (EDPRPs) recommending that the Commission enter an enforcement order assessing administrative penalties against Krebs Utilities, Inc. d/b/a Padok Timbers Subdivision WS and d/b/a K Estates Water System (Respondent). A Proposal for Decision (PFD) was presented by Anne K. Perez, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the EDPRPs on May 31, 2012.

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After considering the PFD, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. Respondent owns and operates for compensation two public water systems, both located in Harris County, Texas: Padok Timbers Subdivision WS (Padok Timbers), RN 101267177, and K Estates Water System (K Estates), RN 101257806.
2. Respondent owns and operates, for compensation, equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use.
3. Stephen P. Krebs is Respondent's owner and registered agent.

4. Padok Timbers provides water for human consumption, has approximately 47 service connections, and serves at least 25 connections per day for at least 60 days per year.
5. K Estates provides water for human consumption, has approximately 21 service connections, and serves at least 25 connections per day for at least 60 days per year.
6. On December 1, 2009, Respondent was operating both Padok Timbers and K Estates in Harris County.
7. In December 2009, Respondent furnished water services at both Padok Timbers and K Estates to more than one customer in Harris County.
8. In December 2009, Harris County was the only county in Texas with a population of 3.3 million or more.
9. On January 5, 2010, the Executive Director (ED) issued an “Affected Utility Notification Letter,” to Respondent, stating that: (1) Respondent was an “affected utility” as defined in Senate Bill 361 (SB 361); (2) amendments to the Texas Water Code as a result of SB 361 required affected utilities to provide emergency operations of their water systems during extended power outages; (3) Respondent was required to submit an emergency preparedness plan (EPP) to the ED by March 1, 2010; (4) Respondent was required to implement an EPP by July 1, 2010; (5) a 90-day extension of the submittal and/or implementation deadline could be requested in writing prior to the applicable deadline; and (6) a waiver might also be obtained if the affected utility demonstrated that compliance with the requirements would place a significant financial burden on the affected utility’s customers.
10. Respondent failed to submit to the ED an EPP for either Padok Timbers or K Estates by the deadline of March 1, 2010.

11. Prior to the applicable deadline, Respondent did not submit a written request to the ED for extension of the March 1, 2010, EPP submittal date for either Padok Timbers or K Estates.
12. Prior to the applicable deadline, Respondent did not submit a written request to the ED for extension of the July 1, 2010, EPP implementation date for either Padok Timbers or K Estates.
13. The ED did not take any action to revise or extend the EPP submittal and implementation deadlines established for Harris County public water systems (PWSs) identified as affected utilities in 2009.
14. The ED did not approve a waiver of EPP requirements because the cost of compliance would not unduly financially burden Respondent's customers.
15. On May 4, 2011, the ED filed EDPRPs in accordance with Tex Water Code § 13.4151(c), alleging that Respondent violated Tex Water Code § 13.1395(b)(2), and 30 Tex. Admin. Code (TAC) §§ 290.39(p)(1), 291.162(a), and 291.162(j), by failing to adopt and submit to the ED for approval by March 1, 2010, EPPs that demonstrate the ability of both of Respondent's water systems to provide emergency operations.
16. The ED recommended that the Commission enter an enforcement order assessing a total administrative penalty of \$1,548.00 as follows: \$735.00 for the failure to submit an EPP for Padok Timbers and \$813.00 for the failure to submit an EPP for K Estates.
17. The proposed administrative penalty of \$735.00 for Padok Timbers was calculated as follows:
 - a. The base penalty began as \$500.00, the maximum penalty provided for each day of violation;
 - b. Respondent's failure to adopt and submit the EPP was categorized as a major programmatic violation, which resulted in a 10% adjustment of the base penalty or \$50.00 per event (\$500 x 10%);

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- c. Respondent failed to adopt and submit the required EPP for 13 different months (from March 1, 2010 through March 17, 2011), resulting in an upward adjustment of the base penalty to \$650.00 (\$50.00 x 13 events);
- d. Good faith efforts to comply were not applicable because Respondent could not provide a retroactive EPP;
- e. Respondent had five Notice of Violations (NOVs), resulting in a 13% enhancement to the base penalty of \$650.00, or \$85.00 in additional penalties;
- f. Respondent's total adjusted penalty was \$735.00 (\$650.00 base penalty + \$85.00 in additional penalties); and
- g. Justice does not require a further penalty adjustment.

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18. The proposed administrative penalty of \$813.00 for K Estates was calculated as follows:

- a. The base penalty began as \$500.00, the maximum penalty provided for each day of violation, for a total of \$500.00;
- b. Respondent's failure to adopt and submit the EPP was categorized as a major programmatic violation, which resulted in a 10% adjustment of the base penalty or \$50.00 per event (\$500 x 10%);
- c. Respondent failed to adopt and submit the required EPP for 13 different months (from March 1, 2010 through March 17, 2011), in an upward adjustment of the base penalty to \$650.00 (\$50.00 x 13 events);
- d. Good faith efforts to comply were not applicable because Respondent could not provide a retroactive EPP;
- e. Respondent had one NOV and one agreed order including a denial of liability, resulting in a 25% enhancement (\$163.00) to the base penalty of \$650.00;
- f. Respondent's total adjusted penalty was \$813.00 (\$650.00 base penalty + \$163.00 in additional penalties); and
- g. Justice does not require a further penalty adjustment.

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19. The ED did not recommend corrective measures.

20. On May 4, 2011, the ED mailed a copy of the EDPRPs to Respondent at its last address of record with the Commission.

21. On October 3, 2011, Respondent requested a hearing on both EDPRPs.

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22. On November 8, 2011, the ED requested that the Commission's Chief Clerk refer both cases to SOAH for hearing.

23. On December 12, 2011, the Chief Clerk mailed a notice of hearing to Respondent, the ED, and the Office of Public Interest Counsel.

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24. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

25. On May 31, 2012, ALJ Anne K. Perez convened an evidentiary hearing at the State Office of Administrative Hearings, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. The ED was represented by TCEQ Litigation Division Attorney Peipey Tang. Respondent appeared through Stephen P. Krebs, Respondent's owner. The Office of Public Interest Counsel did not participate in the hearing. The ALJ closed the record at the conclusion of the hearing that day.

26. Respondent failed to submit an EPP for Padok Timbers or K Estates, for a thirteen-month period from March 1, 2010 to March 17, 2011.

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27. Respondent received NOV letters for both Padok Timbers and K Estates for each of the same months.

28. Respondent had a prior agreed order, No. 2006-1015-MLM-E with an effective date of May 25, 2007, for K Estates. Deleted: entered on June 26, 2007

29. Respondent has achieved full compliance. Deleted: returned to

30. An administrative penalty of \$1,548.00 is reasonable and takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Tex. Water Code § 13.4151 and in the Commission's 2002 Penalty Policy. Deleted: 7.053

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Water Code § 5.013 and Tex. Water Code § 13.4151. Deleted: Tex. Health & Safety Code § 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 ch. 2003.

3. Under Tex. Water Code § 13.4151, the Commission may assess an administrative penalty against a person who violates a provision of chapter 13 of the Tex. Water Code, or a rule or order adopted thereunder. Deleted: Tex. Health & Safety Code § 341.049
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4. Under Tex. Water Code § 13.4151, the penalty may not exceed \$500.00 per violation, and each day of a continuing violation may be considered a separate violation. Deleted: Tex. Health & Safety Code § 341.049
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5. As required by Tex. Water Code § 13.4151(d) and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRPs and of the opportunity to request a hearing on the alleged violations or the penalties proposed therein. Deleted: Tex. Health & Safety Code § 341.049(d)

6. Respondent was notified of the hearing on the alleged violations and the proposed penalties as required by Tex. Gov't Code §§ 2001.051 and 2001.052; Tex. Water Code § 13.4151(g); 1 TAC §§ 155.401 and 155.501; and 30 TAC §§ 1.11 and 39.25.

Deleted: Tex. Health & Safety Code § 341.049(g)

7. Tex. Water Code § 13.1395(a)(1) provides that an affected utility includes a retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer: (A) in a county with a population of 3.3 million or more; or (B) in a county with a population of 400,000 or more adjacent to a county with a population of 3.3 million or more.

8. Tex. Water Code § 13.1395(b)(2) provides that an affected utility shall adopt and submit to the Commission for its approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations.

9. Pursuant to 30 TAC § 290.39(o)(1), each public water system that is an affected utility in existence as of December 1, 2009 must adopt and submit to the ED an EPP prepared in accordance with a template contained in the appendix.

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10. Pursuant to 30 TAC § 291.162(a), an affected utility shall adopt and submit to the ED for his approval an EPP that demonstrates the utility's ability to provide emergency operations.

11. Pursuant to 30 TAC § 291.162(j), affected utilities existing as of December 1, 2009, shall submit the EPP to the ED no later than March 1, 2010.

12. Respondent's failure to adopt and submit to the ED for approval by March 1, 2010, EPPs that demonstrate the ability of both of Respondent's water systems to provide emergency operations, violated Tex Water Code § 13.1395(b)(2), and 30 TAC §§ 290.39(o)(1), 291.162(a), and 291.162(j).

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13. In determining the amount of an administrative penalty, Tex. Water Code § 13.4151(b) requires

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the Commission to consider several factors including:

- The nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;
- 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.

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

15. Based on consideration of the above Findings of Fact, the factors set out in Tex. Water Code § 13.4151(b), and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for the alleged violations. A total administrative penalty of \$1,548.00 is justified and should be assessed against Respondent.

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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. Respondent is assessed an administrative penalty of \$1,548.00 for violations of Tex. Water Code § 13.1395(b)(2), and 30 TAC §§ 290.39(o)(1), 291.162(a), and 291.162(j). 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: Krebs Utilities, Inc. d/b/a

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Padok Timbers Subdivision WS and d/b/a K Estates Water System, Docket No. 2011-0416-UTL-E and 2011-0417-UTL-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 ED 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 ED 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 TAC § 80.273 and Tex. Gov’t Code § 2001.144.
5. As required by [Tex. Water Code § 13.4151\(h\)](#) (h), 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.

Deleted: Tex. Health & Safety Code § 341.049

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission