

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 8, 2023

Via Electronic Filing

The Honorable Linda H. Brite
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Re: Blue Cereus, LLC dba La Caleta Estates and Blue Cereus, LLC dba San Pedro Village
SOAH Docket No. 582-22-07515
TCEQ Docket No. 2022-0010-PWS-E
ED's Exceptions to the ALJ's Proposed Order

Dear Judge Brite:

Enclosed is the Executive Director's Exceptions to the ALJ's Proposed Order, for the above referenced case. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Megan L. Grace".

Megan L. Grace, Staff Attorney
Texas Commission on Environmental Quality
Office of Legal Services, Litigation Division
Megan.Grace@tceq.texas.gov

Enclosure

cc: R. Brian Daniel, Attorney for Respondent
Eli Martinez, Public Interest Counsel

SOAH DOCKET NO. 582-22-07515
TCEQ DOCKET NO. 2022-0010-PWS-E

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER

VS.

Blue Cereus, LLC dba La Caleta Estates and
Blue Cereus, LLC dba San Pedro Village,
RESPONDENT

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BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

TO THE HONORABLE JUDGE BRITE:

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality, by and through Megan L. Grace, a representative of TCEQ's Litigation Division, and respectfully files these exceptions to the Administrative Law Judge's (ALJ) Proposed Order ("Exceptions"). The ED agrees with the substance of the Proposed Order, and these recommended modifications are intended to clarify the provisions of the Order and correct typographical errors.¹

I.

On April 18, 2023, the Honorable Administrative Law Judge Brite issued the Proposed Order in this case. Pursuant to Title 30 of the Texas Administrative Code § 80.257, the ED respectfully recommends the following exceptions:

1. In Findings of Fact No. 14, deleting "the State Office of Administrative Hearings" and the parentheses around the SOAH acronym.
2. In Ordering Provision No. 2, adding "in accordance with 30 Tex. Admin. Code section 290.45."
3. In Ordering Provision No. 3, deleting "in accordance with 30 Tex. Admin. Code section 290.45" and adding in its place "in Ordering Provision No. 2."
4. In Order No. 6, changing from "The Commission's" to "TCEQ's."

¹ Copies of the Proposed Order with the recommended modifications are attached. Attachment A is the redline version and Attachment B is a copy of the Proposed Order incorporating all of the Executive Director's recommended changes.

II.

WHEREFORE, PREMISES CONSIDERED, the ED provides these Exceptions to the ALJ's Proposed Order, so that justice may be done.

Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor
Interim Executive Director

Charmaine Backens, Acting Director
Office of Legal Services

Gitanjali Yadav, Deputy Director
Litigation Division



Megan L. Grace
State Bar of Texas No. 24126518
Texas Commission on Environmental Quality
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3334 (Phone)
Megan.Grace@tceq.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2023, the foregoing Executive Director's Exceptions to 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, true and correct copies of the foregoing Exceptions were sent to the following persons via the methods indicated below:

R. Brian Daniel
Attorney for Blue Cereus, LLC
14101 U.S. Highway 290 West
Building 600, Suite No. 2
Austin, Texas 78737

Via Electronic Mail

The Honorable Judge Linda H. Brite
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Via Electronic Filing

Eli Martinez
Office of Public Interest Counsel, MC 103
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Eli.Martinez@tceq.texas.gov

Via Electronic Mail



Megan L. Grace, Staff Attorney
Texas Commission on Environmental Quality
Office of Legal Services, Litigation Division

ATTACHMENT A
Redlined Proposed Order



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER ASSESSING ADMINISTRATIVE PENALTIES AGAINST
BLUE CEREUS, LLC D/B/A LA CALETA ESTATES AND
BLUE CEREUS, LLC D/B/A SAN PEDRO VILLAGE
TCEQ DOCKET NO. 2022-0010-PWS-E
SOAH DOCKET NO. 582-22-07515**

On _____, the Texas Commission on Environmental Quality (TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against Blue Cereus, LLC d/b/a La Caleta Estates and Blue Cereus, LLC d/b/a San Pedro Village (Respondent). State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Linda Brite conducted an evidentiary hearing by videoconference on January 26, 2023.

After considering the ALJ's proposal for decision, the Commission adopts the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Respondent owns public water systems La Caleta Estates and San Pedro Village in Val Verde County, Texas.
2. La Caleta Estates and San Pedro Village have approximately 48 and 34 service connections respectively and each serve at least 25 people per day for at least 60 days per year.
3. A TCEQ investigator conducted a routine investigation of La Caleta Estates on December 6, 2018, and a follow-up record review investigation on December 6, 2021.
4. A TCEQ investigator conducted a routine investigation of San Pedro Village on December 28, 2018, and a follow-up record review investigation on December 6, 2021.
5. On January 18, 2019, a Notice of Violation was issued to Respondent d/b/a San Pedro Village for failure to provide a water purchase contract between Respondent and its wholesale water supplier.
6. On January 25, 2019, a Notice of Violation was issued to Respondent d/b/a La Caleta Estates for failure to provide a water purchase contract between Respondent and its wholesale water supplier.
7. In the TCEQ investigations, the investigators determined Respondent failed to provide written water purchase contracts for La Caleta Estates and San Pedro Village.
8. Respondent's latest water purchase contracts with the wholesalers for La Caleta Estates and San Pedro Village expired on December 31, 2014.

9. The expired water purchase contracts each state that it may only be modified in writing and may only be renewed in writing prior to its end date.
10. Respondent continued to pay for services, and the wholesalers continued to accept payment and provide services, with oral modifications to the expired purchase contracts.
11. The ED recommended the imposition of a \$210 administrative penalty and corrective actions to bring Respondent into compliance.
12. On June 1, 2022, the ED sent Respondent an EDPRP recommending that the Commission enter an enforcement order assessing administrative penalties and requiring corrective actions against Respondent.
13. Respondent requested a contested case hearing on the allegations in the EDPRP.
14. On July 29, 2022, the case was referred to ~~the State Office of Administrative Hearings (SOAH)~~ for a hearing.
15. On August 10, 2022, the ED issued a Notice of Hearing.
16. SOAH Order No. 3, issued on October 26, 2022, set the hearing and provided participation instructions.
17. Together, the Notice of Hearing and SOAH Order No. 3 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 either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
18. SOAH ALJ Linda Brite convened the hearing via videoconference on January 26, 2023. The ED was represented by attorney Megan Grace. Respondent was represented by attorney Brian Daniel. The Office of Public

Interest Counsel appeared and was represented by Garrett Arthur. The record closed on March 7, 2023, upon filing of closing briefs.

II. CONCLUSIONS OF LAW

1. The Commission has enforcement jurisdiction over violations of the state's drinking water program. Tex. Health & Safety Code § 341.049; Tex. Water Code § 5.013.
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. Tex. Gov't Code ch. 2003.
3. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties and corrective action. Tex. Gov't Code §§ 2001.051-.052; Tex. Water Code § 7.058.
4. The ED has the burden of proof by a preponderance of the evidence in an enforcement proceeding. Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. 30 Tex. Admin. Code § 80.17(b).
5. La Caleta Estates and San Pedro Village are public water systems. 30 Tex. Admin. Code § 290.38(71).
6. Respondent violated 30 Texas Administrative Code section 290.45(f)(1) by failing to provide water purchase contracts to the ED for review.
7. The Commission is authorized to impose administrative penalties and order corrective measures to ensure compliance with the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction provided by Texas Water Code section 5.013 and rules adopted under these provisions. Tex. Water Code § 7.002.
8. In determining the amount of an administrative penalty, the Commission must consider several factors. Tex. Health & Safety Code § 341.049(b).

9. Based on the above Findings of Fact and Conclusions of Law, a total administrative penalty of \$210 is justified and should be assessed against Respondent, and Respondent should be required to implement the corrective actions set out below.

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

1. A \$210 administrative penalty is imposed on Respondent.
2. Within 180 days after the effective date of this Order, Respondent shall secure water purchase contracts for both La Caleta Estates and San Pedro Village in accordance with 30 Texas Administrative Code section 290.45.
3. Within 195 days after the effective date of this Order, Respondent shall submit a written certification to the ED stating that Respondent has performed the actions as described in Ordering Provision No. 2., in accordance with 30 Texas Administrative Code section 290.45.
4. 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, are denied.
5. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code section 80.273 and Texas Government Code section 2001.144.
6. The TCEQ Commission's Chief Clerk shall forward a copy of this Order to Respondent.
7. 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**

Jon Niermann, Chairman for the Commission

ATTACHMENT B
Proposed Order Incorporating ED's Recommended Changes



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER ASSESSING ADMINISTRATIVE PENALTIES AGAINST
BLUE CEREUS, LLC D/B/A LA CALETA ESTATES AND
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Jon Niermann, Chairman for the Commission