

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 5, 2014

Via Certified Mail, Return Receipt Requested, Article Number 7004 1350 0002 7546 9971

Larry Hildebrand, President
LIVE OAK RESORT, INC.
9751 Lone Star Road
Washington, Texas 77880

Re: LIVE OAK RESORT, INC.; RN101269926;
TCEQ Docket No. 2013-0866-WQ-E

Dear Mr. Hilderbrand:

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") is pursuing an enforcement action against LIVE OAK RESORT, INC. for violations of state statutes and Commission Rules. Enclosed is a copy of the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of LIVE OAK RESORT, INC." (the "EDPRP"), which was filed today with the Chief Clerk of the TCEQ.

You may employ an attorney. If LIVE OAK RESORT, INC., its attorney do not file a written answer with the Chief Clerk of the TCEQ within twenty days after you receive this notice and petition, and/or fail to settle this matter by entering into an Agreed Order, the Commission may issue a default order against LIVE OAK RESORT, INC. Answers are due to the Chief Clerk by 5:00 p.m. CST of the deadline date. Answers filed via e-filing must be in either Microsoft Word or Adobe Acrobat (pdf) format. If a default order is issued, your company will be required to pay the assessed penalty and complete any corrective actions recommended by the Executive Director. For further information concerning compliance assistance and the enforcement process, you may contact the TCEQ Small Business and Local Government Assistance Program at (800) 447-2827.

YOUR FAILURE TO ACCEPT OR PICK UP CERTIFIED MAIL WILL NOT RELIEVE YOU OF YOUR RESPONSIBILITY IN THIS MATTER. To request a hearing, send a written hearing request referencing TCEQ Docket No. 2013-0866-WQ-E to the persons listed below via email, regular mail, fax, or e-filing:

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk
P.O. Box 13087, MC 105
Austin, Texas 78711-3087
(512) 239-3311 (fax)
<http://www10.tceq.state.tx.us/epic/efilings>

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

How is our customer service? tceq.texas.gov/goto/customersurvey
printed on recycled paper

and:

Jim Sallans, Staff Attorney
Texas Commission on Environmental Quality
Office of Legal Services
P.O. Box 13087, MC 175
Austin, Texas 78711-3087
(512) 239-3434 (fax)
James.Sallans@tceq.texas.gov

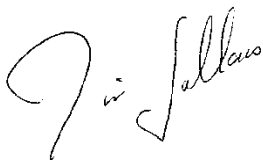
and:

Blas Coy, Public Interest Counsel
Texas Commission on Environmental Quality
Office of the Public Interest Counsel
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-6377 (fax)
pic@tceq.texas.gov

All or a portion of the recommended administrative penalty may be offset through the completion of or payment to a Supplemental Environmental Project ("SEP"), which directs all or a portion of your administrative penalty toward projects aimed at improving the environment. For further information on contributing to a SEP, please visit our website at <http://www.tceq.texas.gov/legal/sep>.

If you have any questions or would like to schedule a meeting to discuss settlement, payment options, or contribution to a SEP, please contact me at (512) 239-3400 or at my email address listed below. I look forward to cooperatively resolving this matter with you.

Sincerely,



Jim Sallans, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality
James.Sallans@tceq.texas.gov

Enclosure

cc: TCEQ Office of the Chief Clerk
TCEQ Public Interest Counsel pic@tceq.texas.gov
Heather Brister, Enforcement Division
Richard Monreal, Waco Regional Office

TCEQ DOCKET NO. 2013-0866-WQ-E

**IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST
LIVE OAK RESORT, INC.;
RN101269926**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S PRELIMINARY REPORT AND PETITION
RECOMMENDING THAT
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENTER AN ENFORCEMENT ORDER ASSESSING AN ADMINISTRATIVE PENALTY
AGAINST AND REQUIRING CERTAIN ACTIONS OF
LIVE OAK RESORT, INC.**

INTRODUCTION

1. The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), by and through a representative of the Litigation Division, hereby issues this Preliminary Report and Petition pursuant to TEX. WATER CODE § 7.054 and chs. 7 and 26 and 30 TEX. ADMIN. CODE ch. 70. Discovery related to this matter is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.
2. LIVE OAK RESORT, INC. ("Respondent") is subject to the enforcement authority of the Commission pursuant to TEX. WATER CODE § 7.002 because the violations alleged herein are within the Commission's general jurisdiction, pursuant to TEX. WATER CODE § 5.013, as they involve violations of the state's water quality program.
3. The Executive Director has come to the conclusion that Respondent violated TEX. WATER CODE § 26.121(a)(1). The Executive Director recommends that the Commission enter an order assessing an administrative penalty against Respondent in the amount of sixty-three thousand dollars (\$63,000.00). Further, the Executive Director recommends that the Commission order Respondent to undertake such actions as are necessary to bring operations into compliance with the Texas Water Code and TCEQ rules.
4. Effective September 1, 2006, the TCEQ does not issue, amend, or renew permits, registrations, certifications, or licenses to an entity or person if any delinquent penalties or delinquent fees are associated with that entity's/person's 9-digit TCEQ Customer Number (CN), regardless of media and/or facility location.

FACTS SUPPORTING VIOLATIONS

5. Respondent owns and operates a recreational resort with an on site sewage facility ("OSSF") located at 9751 Lone Star Road in Washington, Washington County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
6. During investigation conducted on February 6, 2013, a TCEQ Waco Regional Office investigator documented that Respondent violated TEX. WATER CODE § 26.121(a)(1), by failing to prevent unauthorized discharges of wastewater into or adjacent to water in the state. Specifically, wastewater discharged from an OSSF leach field into an unnamed tributary of Coles Creek. Sample results from the discharge indicated high levels of Escherichia Coli ("E.Coli") and high levels of ammonia.

7. During investigation conducted on September 9, 2013, a TCEQ Waco Regional Office investigator documented that Respondent violated TEX. WATER CODE § 26.121(a)(1), by failing to prevent unauthorized discharges of wastewater into or adjacent to water in the state. Specifically, wastewater discharged from a PVC pipe at the facility into an unnamed tributary of Coles Creek. Sample results from the discharge indicated high levels of E.coli and high levels of ammonia.
8. Respondent received notice of the violation referenced in paragraph 6 on or about April 12, 2013.
9. Respondent received notice of the violation referenced in paragraph 7 on or about October 14, 2013.

IMPOSITION OF PENALTY

10. Based on the facts supporting the violations, the Executive Director recommends that an administrative penalty be imposed pursuant to TEX. WATER CODE § 7.051. The Commission has the authority under TEX. WATER CODE § 7.052 (*eff.* September 1, 2011) to assess an administrative penalty of up to \$25,000.00 for each day of each violation listed in paragraph nos. 6 and 7

AMOUNT OF PENALTY

11. In determining the amount of the penalty, the Commission is required by TEX. WATER CODE § 7.053 to consider:
 - a. The nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;
 - b. The impact of the violation on:
 - i. air quality in the region;
 - ii. a receiving stream or underground water reservoir;
 - iii. instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or
 - iv. affected persons;
 - c. With respect to the alleged violator:
 - i. the history and extent of previous violations;
 - ii. the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
 - iii. the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
 - iv. economic benefit gained through the violation; and
 - v. the amount necessary to deter future violations; and
 - d. Any other matters that justice may require.
12. Based on the facts supporting the violations, and having considered the above-described factors, the Executive Director recommends that Respondent be required

to pay an administrative penalty in the amount of sixty-three thousand dollars (\$63,000.00).

13. The penalty calculation worksheet ("PCW") for the recommended administrative penalty for the violation listed in paragraph no. 6 was calculated using the September 2011 Penalty Policy, is attached hereto, and incorporated herein by reference ("Attachment A"). The PCW for the recommended administrative penalty for the violation listed in paragraph no. 7 was calculated using the September 2011 Penalty Policy, is attached hereto, and incorporated herein by reference ("Attachment B"). The PCWs set forth each alleged violation and the statutory factors the Executive Director considered in determining the recommended administrative penalty.
14. The Executive Director followed an established Penalty Policy approved by the Commission in calculating the penalty in this enforcement action. See Texas Commission on Environmental Quality Penalty Policy (September 1, 2011).

CORRECTIVE ACTION ORDERING PROVISIONS

15. Pursuant to TEX. WATER CODE § 7.073, if a person violates any statute or rule within the Commission's jurisdiction, the Commission may order the person to take corrective action.
16. The Executive Director recommends that Respondent be required to implement the following corrective measures:
 - a. Immediately after the effective date of the Commission Order, Respondent shall cease the unauthorized discharges of wastewater from the OSSF at the Facility;
 - b. Within 90 days after the effective date of the Commission Order, Respondent shall provide an evaluation of the current OSSF which includes plans or drawings of the entire system and calculations of the loading received by the OSSF, identify deficiencies within the OSSF, and implement corrective actions necessary to prevent further unauthorized discharges in accordance with; and
 - c. Within 105 days after the effective date of the Commission Order, Respondent shall submit written certification, to demonstrate compliance with Corrective Action Ordering Provisions Nos. 16.a. and 16.b. The certification required by these Corrective Action Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certifications and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team

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

and:

Richard Monreal, Waste Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

RESPONDENT'S RIGHTS AND RESPONSIBILITIES

17. According to TEX. WATER CODE § 7.056 and the TCEQ's procedural rules, Respondent has a right to a hearing on the occurrence of the violations, the amount of the proposed penalty, or both. To preserve this right to a hearing, within 20 days after the day Respondent receives this Preliminary Report and Petition, Respondent must submit a written response to the Executive Director in accordance with TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105(a).

PRAYER

18. ACCORDINGLY, the Executive Director respectfully requests that the Commission enter an order, pursuant to TEX. WATER CODE chs. 7 and 26, assessing a penalty and granting other relief as requested above, together with any other relief the Commission finds appropriate.

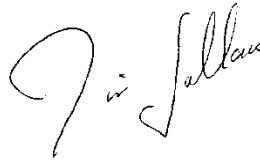
Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E.
Executive Director

Caroline M. Sweeney, Deputy Director
Office of Legal Services

Kathleen C. Decker, Division Director
Litigation Division



by _____

Jim Sallans
State Bar of Texas No. 785413
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)
James.Sallans@tceq.texas.gov

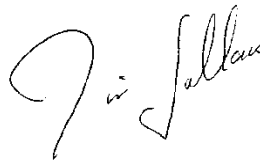
CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2013, the original of the foregoing "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of LIVE OAK RESORT, INC." ("EDPRP") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing EDPRP was mailed via Certified Mail, Return Receipt Requested Article No. 7004 1350 0002 7546 9971, postage prepaid, to:

Larry Hildebrand
LIVE OAK RESORT, INC.
9751 Lone Star Road
Washington, Texas 77880

I further certify that on this day a true and correct copy of the foregoing EDPRP was electronically delivered to the TCEQ Office of Public Interest Counsel at PIC@tceq.texas.gov.



Jim Sallans, Attorney
Office of Legal Services
Litigation Division
Texas Commission on Environmental Quality

ATTACHMENT A
PENALTY CALCULATION WORKSHEET



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	22-Apr-2013	Screening	30-Apr-2013	EPA Due	
	PCW	6-May-2013				

RESPONDENT/FACILITY INFORMATION			
Respondent	LIVE OAK RESORT, INC.		
Reg. Ent. Ref. No.	RN101269926		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46774	No. of Violations	1
Docket No.	2013-0866-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Heather Brister
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$37,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$7,500
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Notes	Enhancement for one order with denial of liability.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$740	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$45,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$45,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$45,000
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$45,000
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Screening Date 30-Apr-2013

Docket No. 2013-0866-WQ-E

PCW

Respondent LIVE OAK RESORT, INC.

Policy Revision 3 (September 2011)

Case ID No. 46774

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101269926

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> **Repeat Violator (Subtotal 3)**

N/A

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 20%

Screening Date 30-Apr-2013
Respondent LIVE OAK RESORT, INC.
Case ID No. 46774
Reg. Ent. Reference No. RN101269926
Media [Statute] Water Quality
Enf. Coordinator Heather Brister

Docket No. 2013-0866-WQ-E

PCW

Policy Revision 3 (September 2011)
PCW Revision August 3, 2011

Violation Number

Rule Cite(s)

Violation Description

Failed to prevent the unauthorized discharges of wastewater into or adjacent to water in the state, as documented during an investigation conducted on February 6, 2013. Specifically, wastewater was discharging from an on-site sewage facility ("OSSF") leach field into an unnamed tributary of Coles Creek. Sample results from the discharge indicated high levels of Escherichia coli ("E.coli") (6,488,000 most probable number per 100 milliliters ("mpn/100 ml")) and high levels of ammonia (45.4 milligrams per liter ("mg/L")).

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="30.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Three monthly events are recommended from the investigation date (February 6, 2013) to the screening date (April 30, 2013).

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent LIVE OAK RESORT, INC.
Case ID No. 46774
Reg. Ent. Reference No. RN101269926
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	6-Feb-2013	31-Jul-2014	1.48	\$740	n/a	\$740

Notes for DELAYED costs

Estimated cost to remediate the affected areas and take all necessary actions to prevent unauthorized discharges from occurring. Date required is the initial investigation date and the final date is the anticipated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$740



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	14-Oct-2013	Screening	24-Oct-2013	EPA Due	
	PCW	24-Oct-2013				

RESPONDENT/FACILITY INFORMATION						
Respondent	LIVE OAK RESORT, INC.					
Reg. Ent. Ref. No.	RN101269926					
Facility/Site Region	9-Waco	Major/Minor Source	Minor			

CASE INFORMATION						
Enf./Case ID No.	46774	No. of Violations	1			
Docket No.	2013-0866-WQ-E	Order Type	Findings			
Media Program(s)	Water Quality	Government/Non-Profit	No			
Multi-Media		Enf. Coordinator	Heather Brister			
		EC's Team	Enforcement Team 1			
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000			

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$3,000
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Notes: Enhancement for one order with denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$0
Approx. Cost of Compliance	\$0

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$18,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$18,000

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$18,000
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$18,000
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Screening Date 24-Oct-2013

Docket No. 2013-0866-WQ-E

PCW

Respondent LIVE OAK RESORT, INC.

Policy Revision 3 (September 2011)

Case ID No. 46774

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101269926

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> **Repeat Violator (Subtotal 3)**

N/A

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 20%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 20%

Screening Date 24-Oct-2013
Respondent LIVE OAK RESORT, INC.
Case ID No. 46774
Reg. Ent. Reference No. RN101269926
Media [Statute] Water Quality
Enf. Coordinator Heather Brister

Docket No. 2013-0866-WQ-E

PCW

Policy Revision 3 (September 2011)
PCW Revision August 3, 2011

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1)

Violation Description
 Failed to prevent the unauthorized discharges of wastewater into or adjacent to water in the state, as documented during investigations conducted on February 6, 2013 and September 3, 2013. Specifically, wastewater was discharging from a PVC-pipe into an unnamed tributary of Coles Creek. Sample results from this discharge indicated high levels of E. coli (559,715 mpn/100 ml) and high levels of ammonia (30.3 mg/L).

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	x			30.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 2 51 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$15,000

Two monthly events are recommended from the investigation date (September 3, 2013) to the screening date (October 24, 2013).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$18,000

This violation Final Assessed Penalty (adjusted for limits) \$18,000

Economic Benefit Worksheet

Respondent LIVE OAK RESORT, INC.
Case ID No. 46774
Reg. Ent. Reference No. RN101269926
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit on the accompanying PCW.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0