

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-0311-PWS-E **TCEQ ID:** RN101223303 **CASE NO.:** 37234

**RESPONDENT NAME:** Texas H2O, Inc.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Canyon Lake Hills Unit 1, located 1.5 miles north of Farm-To-Market Road 2673 on Oblate Road, Comal County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> Complaints were received on January 7 and January 26, 2009, alleging a water outage. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> Complaints were received, but the complainants have not expressed a desire o protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on August 31, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Tel Croston, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-5717; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. Jess W. Lewellyn, Sr., CEO, Texas H2O, Inc., P.O. Box 613, Mansfield, Texas 76063  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> January 7 and January 26, 2009</p> <p><b>Date of Investigation Relating to this Case:</b> February 7, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 13, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>Failure to issue a boil water notice within 24 hours using the prescribed format [30 TEX. ADMIN. CODE § 290.46(q)(1)].</p>	<p><b>Total Assessed:</b> \$1,125</p> <p><b>Total Deferred:</b> \$225  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$900</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, develop and begin maintaining a written protocol that is to be followed to ensure that proper public notification and boil water notices are provided to the customers of the water system in the event of distribution pressures drop below 20 pounds per square inch water outages, positive microbiological samples, low chlorine residuals or other conditions which indicate that the potability of the water may be compromised; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): 460018



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	17-Feb-2009			
	<b>PCW</b>	3-Mar-2009	<b>Screening</b>	3-Mar-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Texas H2O, Inc.
<b>Reg. Ent. Ref. No.</b>	RN101223303
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	37234	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-0311-PWS-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Tel Croston
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$1,000**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **2.0%** Enhancement **Subtotals 2, 3, & 7** **\$20**

**Notes** The Respondent was issued one dissimilar Notice of Violation (NOV) in the past five years.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts	\$105
Approx. Cost of Compliance	\$105

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$1,020**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **10.3%** **Adjustment** **\$105**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes** Enhancement recommended for the recovery of avoided costs of compliance.

**Final Penalty Amount** **\$1,125**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$1,125**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$225**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes** Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$900**

<b>Screening Date</b> 3-Mar-2009	<b>Docket No.</b> 2009-0311-PWS-E	<b>PCW</b>
<b>Respondent</b> Texas H2O, Inc.		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 37234		<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b> RN101223303		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Tel Croston		

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written 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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	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)** 2%

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

N/A	<b>Adjustment Percentage (Subtotal 3)</b> <span style="border: 1px solid black; padding: 2px;">0%</span>
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**>> Compliance History Person Classification (Subtotal 7)**

N/A	<b>Adjustment Percentage (Subtotal 7)</b> <span style="border: 1px solid black; padding: 2px;">0%</span>
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**>> Compliance History Summary**

<b>Compliance History Notes</b>	The Respondent was issued one dissimilar Notice of Violation (NOV) in the past five years.
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**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 2%

<p><b>Screening Date</b> 3-Mar-2009</p> <p><b>Respondent</b> Texas H2O, Inc.</p> <p><b>Case ID No.</b> 37234</p> <p><b>Reg. Ent. Reference No.</b> RN101223303</p> <p><b>Media [Statute]</b> Public Water Supply</p> <p><b>Enf. Coordinator</b> Tel Croston</p>	<p><b>Docket No.</b> 2009-0311-PWS-E</p> <p style="text-align: right;"><b>PCW</b> <small>Policy Revision 2 (September 2002) PCW Revision October 30, 2008</small></p>																		
<p><b>Violation Number</b> <input type="text" value="1"/></p> <p><b>Rule Cite(s)</b> <input type="text" value="30 Tex. Admin. Code § 290.46(q)(1)"/></p> <p><b>Violation Description</b> <input type="text" value="Failed to issue a boil water notice within 24 hours using the prescribed format in 30 Tex. Admin. Code § 290.47(e). Specifically, an investigation conducted on February 7, 2009 documented that the Respondent did not issue a boil water notice within 24 hours for a water outage that occurred on January 6, 2009 and for a water outage due to a line repair on January 26, 2009."/></p>																			
<p><b>Base Penalty</b> <input type="text" value="\$1,000"/></p>																			
<p><b>&gt;&gt; Environmental, Property and Human Health Matrix</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="3" style="width:10%; text-align: center; vertical-align: middle;">OR</td> <td colspan="3" style="text-align: center;">Harm</td> <td rowspan="3" style="width:10%;"></td> </tr> <tr> <td style="width:10%; text-align: center;">Release</td> <td style="width:10%; text-align: center;">Major</td> <td style="width:10%; text-align: center;">Moderate</td> <td style="width:10%; text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;">x</td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: right;">Percent <input type="text" value="50%"/></td> </tr> </table>		OR	Harm				Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Potential	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="50%"/>
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	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>														
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	Harm																		
	Falsification		Major		Moderate		Minor												
	<input type="text"/>	<input type="text"/>	<input type="text"/>		<input type="text"/>														
				Percent <input type="text" value="0%"/>															
<p><b>Violation Events</b></p> <p>Number of Violation Events <input type="text" value="2"/>      <input type="text" value="38"/> Number of violation days</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="7" style="width:10%; vertical-align: middle;">mark only one with an x</td> <td style="width:10%;">daily</td> <td><input type="text"/></td> </tr> <tr> <td>weekly</td> <td><input type="text"/></td> </tr> <tr> <td>monthly</td> <td><input type="text"/></td> </tr> <tr> <td>quarterly</td> <td><input type="text"/></td> </tr> <tr> <td>semiannual</td> <td><input type="text"/></td> </tr> <tr> <td>annual</td> <td><input type="text"/></td> </tr> <tr> <td>single event</td> <td style="text-align: center;">x</td> </tr> </table> <p style="text-align: right;"><b>Violation Base Penalty</b> <input type="text" value="\$1,000"/></p> <p style="text-align: center; border: 1px solid black; padding: 5px;">Two single events are recommended (one for each occurrence).</p>		mark only one with an x	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x			
mark only one with an x	daily		<input type="text"/>																
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	Before NOV		NOV to EDRP/Settlement Offer																
	Extraordinary	<input type="text"/>	Ordinary	<input type="text"/>															
N/A	x	(mark with x)	<input type="text"/>																
<p><b>Economic Benefit (EB) for this violation</b>      <b>Statutory Limit Test</b></p> <p>Estimated EB Amount <input type="text" value="\$105"/>      Violation Final Penalty Total <input type="text" value="\$1,125"/></p> <p style="text-align: right;">This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,125"/></p>																			

### Economic Benefit Worksheet

**Respondent:** Texas H2O, Inc.  
**Case ID No.:** 37234  
**Reg. Ent. Reference No.:** RN101223303  
**Media:** Public Water Supply  
**Violation No.:** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**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

**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)	\$105	6-Jan-2009	27-Jan-2009	0.00	\$0	\$105	\$105

Notes for AVOIDED costs

The avoided costs includes the amount required to provide a boil water notice to all customers of the Facility calculated from the date of the first outage to the 24 hour period after the last outage.

Approx. Cost of Compliance

\$105

**TOTAL**

\$105

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600656201 Texas H2O, Inc. Classification: AVERAGE Rating: 2.73  
 Regulated Entity: RN101223303 CANYON LAKE HILLS UNIT 1 Classification: Site Rating:  
 ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0460018  
 WATER LICENSING LICENSE 0460018  
 Location: 1.5 MI N OF FM 2673 ON OBLATE RD, COMAL COUNTY,  
 TCEQ Region: REGION 13 - SAN ANTONIO  
 Date Compliance History Prepared: July 02, 2009  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: March 10, 2003 to March 10, 2009  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Tel Croston Phone: 239 - 5717

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

### Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	10/06/2003	(248682)
2	12/11/2003	(257446)
3	02/13/2008	(615661)
4	02/13/2009	(725212)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

1 Date: 10/09/2003 (248682) CN600656201

Self	NO	Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(i)	
Description:	Failure to meet this Agency's "Minimum Water System Capacity Requirements." These requirements include: a well capacity of 0.6 gallons per minute per connection.	

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
TEXAS H2O, INC.  
RN101223303

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2009-0311-PWS-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Texas H2O, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply 1.5 miles north of Farm-To-Market Road 2673 on Oblate Road in Comal County, Texas (the "Facility") that has approximately 249 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 18, 2009.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of One Thousand One Hundred Twenty-Five Dollars (\$1,125) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Nine Hundred Dollars (\$900) of the administrative penalty and Two Hundred Twenty-Five Dollars (\$225) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the

deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have failed to issue a boil water notice within 24 hours using the prescribed format in 30 TEX. ADMIN. CODE § 290.47(e), in violation of 30 TEX. ADMIN. CODE § 290.46(q)(1), as documented during an investigation conducted on February 7, 2009.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Texas H2O, Inc., Docket No. 2009-0311-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. It is further ordered that the Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Agreed Order, develop and begin maintaining a written protocol that is to be followed to ensure that proper public notification and boil water notices are provided to the customers of the water system in the event of distribution pressures below 20 pounds per square inch water outages, positive microbiological samples, low chlorine residuals or other conditions which indicate that the potability of the water may be compromised, as required by 30 TEX. ADMIN. CODE § 290.46; and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below and include detailed supporting documentation including photographs, receipts, and/or records to demonstrate compliance with Ordering Provision 2.a. 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 submitted to:

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

with a copy to:

Water Section, Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Szolter  
\_\_\_\_\_  
For the Executive Director

8/21/2009  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

John Szolter  
\_\_\_\_\_  
Signature

May 31, 2009  
\_\_\_\_\_  
Date

Jess W. Lowelby, Sr.  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Texas H2O, Inc.

CEO  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

