

**SOAH DOCKET NO. 582-12-5353  
TCEQ DOCKET NO. 2011-1647-PWS-E**

<b>EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, PETITIONER</b>	§ § § § § § § § §	<b>BEFORE THE</b>  <b>STATE OFFICE OF</b>  <b>ADMINISTRATIVE HEARINGS</b>
<b>VS.</b>		
<b>SOUTH TEXAS WATER AUTHORITY, RESPONDENT</b>		

**EXECUTIVE DIRECTOR’S EXCEPTIONS  
TO THE ALJ’S PROPOSED FINAL ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE CRAIG R. BENNETT (“ALJ”):

The Executive Director (“ED”) of the Texas Commission on Environmental Quality (“TCEQ”) respectfully files these exceptions to the ALJ’s Proposed Order for the ALJ’s reconsideration and the Commissioners’ consideration. Copies of the Proposed Order with the recommended modifications are attached. Attachment “A” is the redline/strikeout version which clearly delineates the recommended modifications. Attachment “B” is a copy of the Proposed Order incorporating the Executive Director’s recommended changes.

The ED respectfully requests the ALJ’s Proposed Order be amended as follows:

1. Finding of Fact No. 4 be amended as detailed below to correctly reflect the record:

Currently, STWA sells potable water on a wholesale basis to ~~six~~ seven customers: Nueces Water Supply Corporation; City of Kingsville; Nueces County Water Control and Improvement District No. 5; City of Bishop; City of Driscoll; ~~and~~ City of Agua Dulce; and Ricardo Water Supply Corporation. These ~~six~~ seven customers of STWA then distribute the water to individuals within their communities for human consumption.
2. Finding of Fact No. 5 be amended as detailed below correctly reflect the record:

Each of STWA’s ~~six~~ seven current customers is a purchased water public water system, as defined by the Commission’s rules.
3. Finding of Fact No. 6 be amended to change the word “six” to “seven” correctly reflect the record.
4. Finding of Fact No. 25 be amended to strike the word “a” and add the words “the residual” before the word “disinfectant” to correctly reflect the record.

5. Finding of Fact No. 38 be amended to strike the number "20" and replace it with the number "19" correctly reflect the record.

## **PRAYER**

Therefore, the ED requests that the ALJ amend his Proposed Order. To the extent that the ALJ's Proposal for Decision is inconsistent with these exceptions and recommended modifications, the Executive Director excepts to the Proposal for Decision.

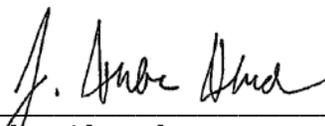
Respectfully submitted,

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 

\_\_\_\_\_  
J. Amber Ahmed  
State Bar of Texas No. 24080756  
Meaghan Bailey  
State Bar of Texas No. 24082647  
Amanda Patel  
State Bar of Texas No. 24083627

TCEQ Office of Legal Services  
Litigation Division, MC 175  
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Austin, Texas 78711-3087  
(512) 239-3400  
(512) 239-3434 (FAX)  
[Amber.Ahmed@tceq.texas.gov](mailto:Amber.Ahmed@tceq.texas.gov)

## CERTIFICATE OF SERVICE

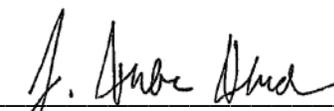
I hereby certify that on July 20, 2016, the foregoing document was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day the foregoing document was served as indicated:

The Honorable Administrative Law Judge Craig R. Bennett  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701-1649  
(512) 322-2061  
**Via Electronic Filing**

Bill Flickinger  
Attorney for the Respondent  
Willatt & Flickinger  
2001 North Lamar Boulevard  
Austin, Texas 78705  
**Via Electronic Mail to [bflickinger@wfaustin.com](mailto:bflickinger@wfaustin.com)**

Rudy Calderon  
Office of Public Interest Counsel, MC 103  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
**Via Electronic Mail to [rudy.calderon@tceq.texas.gov](mailto:rudy.calderon@tceq.texas.gov)**

  
\_\_\_\_\_  
J. Amber Ahmed

**Attachment A**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER  
IN REGARD TO THE ENFORCEMENT ACTION  
AGAINST SOUTH TEXAS WATER AUTHORITY  
TCEQ DOCKET NO. 2011-1647-PWS-E,  
SOAH DOCKET NO. 582-12-5353**

On November 20, 2013; June 3, 2015; and \_\_\_\_\_, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's First Amended Report and Petition recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by South Texas Water Authority (STWA). A Proposal for Decision (PFD) and a Supplemental PFD on Remand have been presented by Craig R. Bennett, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted hearings concerning the First Amended Report and Petition on March 5-6, 2013, and December 16-17, 2015, in Austin, Texas.

After considering the ALJ's PFD and Supplemental PFD on Remand, the Commission adopts the following Findings of Fact and Conclusions of Law:

## I. FINDINGS OF FACT

### A. Background

1. STWA was created by the Texas legislature in 1979 as a water conservation and reclamation district designed to provide a wholesale water supply to the cities of Kingsville, Driscoll, Bishop, and Agua Dulce.
2. STWA owns and operates a wholesale water supply system located 1/2 mile west of United States Highway 77 on East County Road 2010 in Kingsville, Kleberg County, Texas.
3. STWA purchases treated water from the City of Corpus Christi and distributes the water to its customers through two pipelines: a 42-inch pipe that runs 28 miles from Corpus Christi (the Main Line), and a 14-inch pipe that splits off the Main Line and runs approximately 16.5 miles (the West Branch).
4. Currently, STWA sells potable water on a wholesale basis to ~~six~~-seven customers: Nueces Water Supply Corporation; City of Kingsville; Nueces County Water Control and Improvement District No. 5; City of Bishop; City of Driscoll; ~~and~~ City of Agua Dulce; ~~and~~ Ricardo Water Supply Corporation. These six customers of STWA then distribute the water to individuals within their communities for human consumption.
5. Each of STWA's ~~six~~-seven current customers is a purchased water public water system, as defined by the Commission's rules.
6. STWA does not currently provide direct water service to any individual, but the water STWA provides is ultimately used by approximately 37,000 individuals, who receive the water on a retail basis from STWA's ~~six~~-seven customer systems.
7. Until November 2012, STWA also served the LCS Detention Center in addition to the customers identified above. The LCS Detention Center is a private correctional facility that houses individuals. At all times STWA provided service to the LCS Detention Center, the facility had at least 25 individuals who were served directly by STWA.
8. STWA no longer provides service to the LCS Detention Center.

### B. Procedural History, Notice, and Jurisdiction

9. On July 19, 2011, the TCEQ investigator Melanie Edwards investigated STWA's facilities and documented the eight violations alleged in this case.
10. On February 8, 2012, the Executive Director (ED) of the TCEQ filed his Preliminary Report and Petition, seeking penalties and corrective action against STWA.

11. On February 13, 2012, STWA filed an answer to the Preliminary Report and Petition and requested a hearing.
12. On March 16, 2012, the ED filed a letter asking the Commission's Chief Clerk to refer this case to SOAH for hearing, and the Chief Clerk referred it to SOAH on March 22, 2012.
13. On March 26, 2012, the Chief Clerk mailed a notice of hearing to STWA, the ED, and the Office of Public Interest Counsel.
14. 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.
15. A preliminary hearing convened before SOAH ALJ Penny Wilkov on April 26, 2012.
16. On September 25, 2012, the ED filed a First Amended Preliminary Report and Petition, which is the current pleading in this case.
17. An initial evidentiary hearing on the merits was conducted on March 5-6, 2013, with ALJ Craig R. Bennett presiding. The ED appeared through attorneys Jennifer Cook and Peipey Tang. STWA appeared through attorneys Mike Willatt and Bill Flickinger. The record initially closed on May 24, 2013, after written closing arguments were filed.
18. In July 2013, the ALJ issued his initial PFD in this case.
19. On November 20, 2013, the Commission considered the initial PFD and continued deliberation of the matter without issuing a final decision to allow the ED to work with STWA to come up with solutions that would allow STWA to comply with the rules in a cost-effective, feasible manner.
20. The TCEQ has a team of engineers, water chemists, and other experts within its Water Supply Division known as the Texas Optimization Program (TOP). The TOP team's responsibilities include training water suppliers to properly treat water and diagnose problems in water supplies.
21. The TOP team studied STWA's system for five weeks in September and October 2014 and prepared a Distribution System Evaluation report that was delivered to STWA in May 2015.
22. The ED subsequently requested that this case be remanded to SOAH for an additional limited evidentiary hearing regarding possible corrective actions.
23. On June 4, 2015, the Commission issued an order remanding the case back to SOAH to take additional evidence related to the cost-effective options for STWA to comply with the Commission's minimum disinfectant residual level requirements.

24. After the matter was remanded to SOAH, the ALJ conducted an additional evidentiary hearing on December 16-17, 2015. The parties submitted additional briefing on the issues, and the record closed on May 20, 2016.

### C. The Violations

25. STWA uses chloramine as a the residual disinfectant in its water system.
26. Field tests conducted on STWA's pipeline in 2011 showed chloramine levels below 0.5 mg/L on numerous occasions in 2011. Specifically, the following chloramine levels (expressed in mg/L) were observed at different locations along the pipeline: 0.27, 0.20, 0.28, 0.40, 0.25, 0.31, and 0.21.
27. In 2011, STWA's chemical and microbiological monitoring plan was missing required data, including information on the sampling frequency, the analytical procedures used, and a written description of the methods used to calculate compliance. After the ED's investigation, the monitoring plan was updated to include the missing information.
28. In 2011, STWA failed to have required paperwork showing it was using an approved laboratory for analyzing its samples for the maximum residual disinfectant levels.
29. In 2011, STWA employees were running their own samples to determine compliance with the maximum residual disinfectant levels.
30. In 2011, STWA was sampling six pump stations, five times per week, which would have resulted in a monthly total of approximately 120 samples (*i.e.*, 30 per week); however, STWA had less than 40 samples per month included in its Disinfectant Level Quarterly Operating Reports (DLQORs).
31. STWA was previously granted an exception by the ED to convert from the use of a chlorine disinfectant to a chloramine disinfectant. As part of that exception, the ED required that STWA monitor and record free ammonia levels.
32. In 2011, STWA was not monitoring or recording free ammonia levels as required by the ED's exception.
33. In 2011, STWA's continuous disinfectant residual analyzers were not being calibrated.
34. In 2011, STWA used a sight glass on the 2,500-gallon tank at its Bishop Eastside Pump Station to comply with the TCEQ's requirement that all pressure tanks with a capacity greater than 1,000 gallons must be fitted with a device to readily determine the air-water-volume.

35. In 2011, the sight glass on the 2,500-gallon tank at STWA's Bishop Eastside Pump Station was inoperable.
36. In 2011, STWA was monitoring the chloramine disinfectant residual after booster disinfection at pump stations, which did not provide a representative sample of the disinfectant residual throughout the 42-inch pipe from the water treatment plant to the City of Kingsville's pump station.
37. When samples were collected in 2011 from locations prior to STWA's booster locations, these samples reflected disinfectant levels below the required minimum residual level.

**D. STWA's System**

38. The average water age in STWA's Main Line over the 4-year time period studied by the TOP team was approximately ~~20~~19 days. If the 5-month period during which Kingsville took no water was excluded, the average dropped to 10 days. However, while the "averages" were low, there were periods and locations where the water age was more than 150 days when Kingsville was not taking water for an extended period of time.
39. STWA does not sample the water in its system at any point along the Main Line after it accepts it from the City of Corpus Christi. Rather, it simply boosts the water with disinfectant at the Driscoll Booster Station and then again at chloramine boosting stations at the customer delivery points.
40. STWA is not able to properly manage the water chemistry in its system because it does not have enough representative sampling points so that it can make water chemistry adjustments as needed throughout the system.
41. STWA's system needs to be sampled at more points so that tailored boosting can occur, based upon the actual water chemistry.
42. Currently, STWA lacks the ability to add ammonia to the Main Line at the Driscoll Booster Station.
43. Ammonia boosting capabilities at the Driscoll Booster Station would allow STWA to better maintain a compliant minimum disinfectant level as the water travels the rest of the way through the pipe to the City of Kingsville and other users.
44. The cost to add ammonia boosting facilities at the Driscoll Booster Station is estimated at between \$100,000 and \$150,000.

## II. CONCLUSIONS OF LAW

### A. Procedural History, Notice, and Jurisdiction

1. The Commission has jurisdiction in this case pursuant to Texas Water Code chapter 7 and Texas Health & Safety Code chapter 341.
2. Under Texas Health and Safety Code § 341.049, the Commission may assess an administrative penalty against any person who violates chapter 341, subchapter C of the Texas Health and Safety Code, or of any rule or order adopted or issued thereunder.
3. Under Texas Health and Safety Code § 341.049, the penalty may not exceed \$1,000 per violation, per day, for each of the violations at issue in this case.
4. In determining the administrative penalty, Texas Health and Safety Code § 341.049 requires the Commission to consider several factors, and the Commission's Penalty Policy implements those factors.
5. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
6. The ED has the burden of proof in this case by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(d).
7. STWA was notified of the First Amended Report and Petition and of the opportunity to request a hearing on the alleged violations, penalties, and corrective actions proposed therein. 30 Tex. Admin. Code §§ 1.11 and 70.104.
8. STWA was adequately notified of the hearing on the alleged violations and the proposed penalties and corrective actions. Tex. Gov't Code §§ 2001.051(1) and 2001.052; 1 Tex. Admin. Code § 155.401; and 30 Tex. Admin. Code §§ 1.11, 1.12, 39.25, 70.104, and 80.6(b)(3).

### B. STWA's Status as a Public Water System

9. STWA is a public water system. 30 Tex. Admin. Code § 290.38(66).

### **C. The Violations**

10. The TCEQ's rules require the residual disinfectant concentration of the water within a public water system's distribution system to be at least 0.5 mg/L of chloramine (if chloramine is used instead of free chlorine). 30 Tex. Admin. Code §§ 290.110(b)(4) and 290.46(d)(2)(B).
11. In 2011, STWA violated 30 Texas Administrative Code §§ 290.110(b)(4) and 290.46(d)(2)(B) because it failed to maintain minimum chloramine levels throughout the system.
12. The TCEQ's rules require that all public water systems maintain an up-to-date chemical and microbiological monitoring plan. 30 Tex. Admin. Code § 290.121.
13. In 2011, STWA violated 30 Texas Administrative Code § 290.121 because its monitoring plan data was missing some of the required information.
14. The TCEQ's rules require that an approved laboratory be used to analyze samples to determine compliance with maximum residual disinfectant levels. 30 Tex. Admin. Code § 290.119(a)(2)(D).
15. In 2011, STWA violated 30 Texas Administrative Code § 290.119(a)(2)(D) by failing to use an approved laboratory to analyze samples to determine compliance with maximum residual disinfectant levels.
16. The TCEQ's rules require that public water systems submit DLQORs showing samples taken to demonstrate compliance with the TCEQ's disinfectant level requirements, and that all samples taken must be included in the analysis. 30 Tex. Admin. Code § 290.110(f)(1).
17. In 2011, STWA violated 30 Texas Administrative Code § 290.110(f)(1) by failing to include all samples in its compliance analysis.
18. The TCEQ's rules allow the ED to grant exceptions to certain requirements of the Commission's rules provided that the water system complies with all requirements imposed by the ED in the exception. 30 Tex. Admin. Code § 290.39(1).
19. In 2011, STWA violated 30 Texas Administrative Code § 290.39(1) by failing to comply with a requirement of the ED to monitor and record free ammonia levels as a condition of the exception granted to STWA to convert from the use of a chlorine disinfectant to a chloramine disinfectant.
20. The TCEQ's rules require that continuous disinfectant residual analyzers be calibrated every 90 days using chlorine solutions of known concentrations. 30 Tex. Admin. Code § 290.46(s)(2)(C)(i).

21. In 2011, STWA violated 30 Texas Administrative Code § 290.46(s)(2)(C)(i) by failing to calibrate its continuous disinfectant residual analyzers every 90 days.
22. The TCEQ's rules require that all pressure tanks with a capacity greater than 1,000 gallons must be fitted with a device to readily determine the air-water-volume. 30 Tex. Admin. Code § 290.43(d)(3).
23. In 2011, STWA violated 30 Texas Administrative Code § 290.43(d)(3) by failing to have an operable device on its 2,500-gallon storage tank at the Bishop Eastside Pump Station that could readily determine the air-water-volume.
24. The TCEQ's rules require that public water systems monitor the disinfectant residual at various representative locations throughout the distribution system. 30 Tex. Admin. Code § 290.110(c)(4).
25. In 2011, STWA violated 30 Texas Administrative Code § 290.110(c)(4) because it was not monitoring the disinfectant residual levels at representative locations throughout its distribution system.
26. The penalty that the ED proposes for STWA's violations considered in this case conform to the requirements of the Texas Health and Safety Code § 341.049 and the Commission's Penalty Policy.
27. STWA should be assessed a total administrative penalty of \$2,443 for the violations considered in this case.
28. STWA should be required to take corrective actions to bring its water system into compliance with all applicable water quality rules, including the minimum disinfectant residual requirements of the TCEQ's rules.

### III. ORDERING PROVISIONS

**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. Within 30 days after the effective date of this Commission Order, South Texas Water Authority shall pay an administrative penalty in the amount of \$2,443 for its violations of the Commission's rules as noted above and considered in this case.
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: South Texas Water Authority, TCEQ Docket No. 2011-1647-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

3. The payment of the administrative penalty listed herein and South Texas Water Authority's compliance with all the terms and conditions set forth in this Order will completely resolve the past violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.
4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to South Texas Water Authority if the Executive Director determines that South Texas Water Authority has not complied with one or more of the terms or conditions in this Order.
5. Immediately upon the effective date of this Commission Order, South Texas Water Authority shall:
  - a. Begin providing access to the Facility to allow entry to employees and agents of the TCEQ for the purpose of inspecting and investigating conditions related to the Facility, in accordance with 30 Texas Administrative Code § 290.46(a); and
  - b. Respond completely and adequately, as determined by the Executive Director, to all requests for information regarding these Ordering Provisions within 15 days after the date of such request or otherwise specified in writing by the Executive Director, provided that no other applicable response deadline is set out elsewhere in this Commission Order.

6. Within 30 days after the effective date of the Commission Order, South Texas Water Authority shall:
  - a. Check the accuracy of the continuous disinfectant analyzers using chlorine solutions of known concentrations or by comparing the results from the on-line analyzer with the results of an approved benchtop method at least once every seven (7) days and properly verify the analyzers used to determine the effectiveness of chloramination every ninety (90) days, in accordance with 30 Texas Administrative Code § 290.46(s)(2);
  - b. Locate, uncover, mark, document, and create a complete inventory of all existing sampling points, valves, and mains on all water lines, including the west branch, in accordance with 30 Texas Administrative Code § 290.46(n); and
  - c. Submit an up-to-date map of the Facility and as-built drawings of the chloramination facilities, in accordance with 30 Texas Administrative Code § 290.46(n).
7. Within 45 days after the effective date of the Commission Order, South Texas Water Authority shall:
  - a. Submit written certification in accordance with Ordering Provision No. 11 below, to demonstrate compliance with Ordering Provision No. 6.a.;
  - b. Submit an updated monitoring plan for the system, including an updated sampling plan, in accordance with 30 Texas Administrative Code § 290.121. The monitoring plan shall include the complete inventory created pursuant to Ordering Provision No. 6.b. above, including documentation showing the location of all existing sampling points, valves, and mains on all water lines, including the west branch; and
  - c. Submit a Nitrification Action Plan (“NAP”), in accordance with 30 Texas Administrative Code § 290.46(z), as well as Standard Operating Procedures for implementing the NAP and ensuring the sampling and monitoring plans referenced in Ordering Provision No. 7.b. are properly implemented.
8. Within 90 days after the effective date of this Commission Order, South Texas Water Authority shall:
  - a. Submit a progress report for the preceding 90-day period, and for each quarter thereafter, which shall include the following:
    - i. A brief summary of all actions taken and the results thereof during the preceding 90-day period, including implementation of the most recent monitoring plan and efforts made to maintain compliance with disinfectant residual levels; and

- ii. All sampling data gathered during the preceding 90-day period.

All quarterly progress reports shall be submitted to the TCEQ no later than the fifteenth (15) day after the end of each quarter. South Texas Water Authority shall continue to submit quarterly progress reports to the TCEQ until it can demonstrate at least 12 consecutive months of compliance with the disinfectant residual requirements.

- b. Submit documentation demonstrating the installation of any additional sampling taps and valves, in accordance with 30 Texas Administrative Code § 290.39;
- c. Submit an updated monitoring plan, including an updated sampling plan, reflecting the installation of any additional sampling taps and valves, in accordance with 30 Texas Administrative Code § 290.121;
- d. Submit for approval all plans and specifications to add ammonia boosting capabilities at the Driscoll Booster Station, in accordance with 30 Texas Administrative Code § 290.39. The plans and specifications shall be submitted to:

Plan Review Team, MC 159  
Water Supply Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- e. Submit, to the address listed in Ordering Provision No. 8.d. above, engineering plans, specifications, maps, and other pertinent information for proposed additional sampling points and valves, including the west branch, pursuant to 30 Texas Administrative Code § 290.46(n); and
  - f. Submit, to the address listed in Ordering Provision No. 8.d. above, a detailed engineering report that describes the strategies and facilities Respondent intends to employ to comply with the disinfectant residual requirement.
9. Within 180 days after the effective date of this Commission Order, South Texas Water Authority shall:
- a. Submit documentation demonstrating the installation of ammonia boosting capabilities at the Driscoll Booster Station, in accordance with 30 Texas Administrative Code §§ 290.39 and 290.110; and
  - b. Submit an updated monitoring plan, including an updated sampling plan, reflecting the installation of ammonia boosting capabilities at the Driscoll Booster Station, in accordance with 30 Texas Administrative Code § 290.121.

10. Within 730 days after the effective date of this Commission Order, South Texas Water Authority shall submit documentation demonstrating at least 12 consecutive months of compliance with the disinfectant residual requirements, in accordance with 30 Texas Administrative Code §§ 290.110 and 290.46.
11. All documents, reports, plans and other correspondence and information required to be submitted under these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/ or other records, shall be signed by Respondent, 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.”

Unless otherwise indicated, all documents, reports, plans, correspondence, information, supporting documents and certifications shall be submitted to:

Water Supply Division, MC 154  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

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

12. 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.
13. The effective date of this Order is the date the Order is final. Tex. Gov’t Code § 2001.144 and 30 Tex. Admin. Code § 80.273.
14. The Commission’s Chief Clerk shall forward a copy of this Order to South Texas Water Authority.
15. 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.

**SIGNED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

---

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

**Attachment B**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**



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16. On September 25, 2012, the ED filed a First Amended Preliminary Report and Petition, which is the current pleading in this case.
17. An initial evidentiary hearing on the merits was conducted on March 5-6, 2013, with ALJ Craig R. Bennett presiding. The ED appeared through attorneys Jennifer Cook and Peipey Tang. STWA appeared through attorneys Mike Willatt and Bill Flickinger. The record initially closed on May 24, 2013, after written closing arguments were filed.
18. In July 2013, the ALJ issued his initial PFD in this case.
19. On November 20, 2013, the Commission considered the initial PFD and continued deliberation of the matter without issuing a final decision to allow the ED to work with STWA to come up with solutions that would allow STWA to comply with the rules in a cost-effective, feasible manner.
20. The TCEQ has a team of engineers, water chemists, and other experts within its Water Supply Division known as the Texas Optimization Program (TOP). The TOP team's responsibilities include training water suppliers to properly treat water and diagnose problems in water supplies.
21. The TOP team studied STWA's system for five weeks in September and October 2014 and prepared a Distribution System Evaluation report that was delivered to STWA in May 2015.
22. The ED subsequently requested that this case be remanded to SOAH for an additional limited evidentiary hearing regarding possible corrective actions.
23. On June 4, 2015, the Commission issued an order remanding the case back to SOAH to take additional evidence related to the cost-effective options for STWA to comply with the Commission's minimum disinfectant residual level requirements.

24. After the matter was remanded to SOAH, the ALJ conducted an additional evidentiary hearing on December 16-17, 2015. The parties submitted additional briefing on the issues, and the record closed on May 20, 2016.

### **C. The Violations**

25. STWA uses chloramine as the residual disinfectant in its water system.
26. Field tests conducted on STWA's pipeline in 2011 showed chloramine levels below 0.5 mg/L on numerous occasions in 2011. Specifically, the following chloramine levels (expressed in mg/L) were observed at different locations along the pipeline: 0.27, 0.20, 0.28, 0.40, 0.25, 0.31, and 0.21.
27. In 2011, STWA's chemical and microbiological monitoring plan was missing required data, including information on the sampling frequency, the analytical procedures used, and a written description of the methods used to calculate compliance. After the ED's investigation, the monitoring plan was updated to include the missing information.
28. In 2011, STWA failed to have required paperwork showing it was using an approved laboratory for analyzing its samples for the maximum residual disinfectant levels.
29. In 2011, STWA employees were running their own samples to determine compliance with the maximum residual disinfectant levels.
30. In 2011, STWA was sampling six pump stations, five times per week, which would have resulted in a monthly total of approximately 120 samples (*i.e.*, 30 per week); however, STWA had less than 40 samples per month included in its Disinfectant Level Quarterly Operating Reports (DLQORs).
31. STWA was previously granted an exception by the ED to convert from the use of a chlorine disinfectant to a chloramine disinfectant. As part of that exception, the ED required that STWA monitor and record free ammonia levels.
32. In 2011, STWA was not monitoring or recording free ammonia levels as required by the ED's exception.
33. In 2011, STWA's continuous disinfectant residual analyzers were not being calibrated.
34. In 2011, STWA used a sight glass on the 2,500-gallon tank at its Bishop Eastside Pump Station to comply with the TCEQ's requirement that all pressure tanks with a capacity greater than 1,000 gallons must be fitted with a device to readily determine the air-water-volume.

35. In 2011, the sight glass on the 2,500-gallon tank at STWA's Bishop Eastside Pump Station was inoperable.
36. In 2011, STWA was monitoring the chloramine disinfectant residual after booster disinfection at pump stations, which did not provide a representative sample of the disinfectant residual throughout the 42-inch pipe from the water treatment plant to the City of Kingsville's pump station.
37. When samples were collected in 2011 from locations prior to STWA's booster locations, these samples reflected disinfectant levels below the required minimum residual level.

**D. STWA's System**

38. The average water age in STWA's Main Line over the 4-year time period studied by the TOP team was approximately 19 days. If the 5-month period during which Kingsville took no water was excluded, the average dropped to 10 days. However, while the "averages" were low, there were periods and locations where the water age was more than 150 days when Kingsville was not taking water for an extended period of time.
39. STWA does not sample the water in its system at any point along the Main Line after it accepts it from the City of Corpus Christi. Rather, it simply boosts the water with disinfectant at the Driscoll Booster Station and then again at chloramine boosting stations at the customer delivery points.
40. STWA is not able to properly manage the water chemistry in its system because it does not have enough representative sampling points so that it can make water chemistry adjustments as needed throughout the system.
41. STWA's system needs to be sampled at more points so that tailored boosting can occur, based upon the actual water chemistry.
42. Currently, STWA lacks the ability to add ammonia to the Main Line at the Driscoll Booster Station.
43. Ammonia boosting capabilities at the Driscoll Booster Station would allow STWA to better maintain a compliant minimum disinfectant level as the water travels the rest of the way through the pipe to the City of Kingsville and other users.
44. The cost to add ammonia boosting facilities at the Driscoll Booster Station is estimated at between \$100,000 and \$150,000.

## II. CONCLUSIONS OF LAW

### A. Procedural History, Notice, and Jurisdiction

1. The Commission has jurisdiction in this case pursuant to Texas Water Code chapter 7 and Texas Health & Safety Code chapter 341.
2. Under Texas Health and Safety Code § 341.049, the Commission may assess an administrative penalty against any person who violates chapter 341, subchapter C of the Texas Health and Safety Code, or of any rule or order adopted or issued thereunder.
3. Under Texas Health and Safety Code § 341.049, the penalty may not exceed \$1,000 per violation, per day, for each of the violations at issue in this case.
4. In determining the administrative penalty, Texas Health and Safety Code § 341.049 requires the Commission to consider several factors, and the Commission's Penalty Policy implements those factors.
5. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
6. The ED has the burden of proof in this case by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(d).
7. STWA was notified of the First Amended Report and Petition and of the opportunity to request a hearing on the alleged violations, penalties, and corrective actions proposed therein. 30 Tex. Admin. Code §§ 1.11 and 70.104.
8. STWA was adequately notified of the hearing on the alleged violations and the proposed penalties and corrective actions. Tex. Gov't Code §§ 2001.051(1) and 2001.052; 1 Tex. Admin. Code § 155.401; and 30 Tex. Admin. Code §§ 1.11, 1.12, 39.25, 70.104, and 80.6(b)(3).

### B. STWA's Status as a Public Water System

9. STWA is a public water system. 30 Tex. Admin. Code § 290.38(66).

## C. The Violations

10. The TCEQ's rules require the residual disinfectant concentration of the water within a public water system's distribution system to be at least 0.5 mg/L of chloramine (if chloramine is used instead of free chlorine). 30 Tex. Admin. Code §§ 290.110(b)(4) and 290.46(d)(2)(B).
11. In 2011, STWA violated 30 Texas Administrative Code §§ 290.110(b)(4) and 290.46(d)(2)(B) because it failed to maintain minimum chloramine levels throughout the system.
12. The TCEQ's rules require that all public water systems maintain an up-to-date chemical and microbiological monitoring plan. 30 Tex. Admin. Code § 290.121.
13. In 2011, STWA violated 30 Texas Administrative Code § 290.121 because its monitoring plan data was missing some of the required information.
14. The TCEQ's rules require that an approved laboratory be used to analyze samples to determine compliance with maximum residual disinfectant levels. 30 Tex. Admin. Code § 290.119(a)(2)(D).
15. In 2011, STWA violated 30 Texas Administrative Code § 290.119(a)(2)(D) by failing to use an approved laboratory to analyze samples to determine compliance with maximum residual disinfectant levels.
16. The TCEQ's rules require that public water systems submit DLQORs showing samples taken to demonstrate compliance with the TCEQ's disinfectant level requirements, and that all samples taken must be included in the analysis. 30 Tex. Admin. Code § 290.110(f)(1).
17. In 2011, STWA violated 30 Texas Administrative Code § 290.110(f)(1) by failing to include all samples in its compliance analysis.
18. The TCEQ's rules allow the ED to grant exceptions to certain requirements of the Commission's rules provided that the water system complies with all requirements imposed by the ED in the exception. 30 Tex. Admin. Code § 290.39(1).
19. In 2011, STWA violated 30 Texas Administrative Code § 290.39(1) by failing to comply with a requirement of the ED to monitor and record free ammonia levels as a condition of the exception granted to STWA to convert from the use of a chlorine disinfectant to a chloramine disinfectant.
20. The TCEQ's rules require that continuous disinfectant residual analyzers be calibrated every 90 days using chlorine solutions of known concentrations. 30 Tex. Admin. Code § 290.46(s)(2)(C)(i).

21. In 2011, STWA violated 30 Texas Administrative Code § 290.46(s)(2)(C)(i) by failing to calibrate its continuous disinfectant residual analyzers every 90 days.
22. The TCEQ's rules require that all pressure tanks with a capacity greater than 1,000 gallons must be fitted with a device to readily determine the air-water-volume. 30 Tex. Admin. Code § 290.43(d)(3).
23. In 2011, STWA violated 30 Texas Administrative Code § 290.43(d)(3) by failing to have an operable device on its 2,500-gallon storage tank at the Bishop Eastside Pump Station that could readily determine the air-water-volume.
24. The TCEQ's rules require that public water systems monitor the disinfectant residual at various representative locations throughout the distribution system. 30 Tex. Admin. Code § 290.110(c)(4).
25. In 2011, STWA violated 30 Texas Administrative Code § 290.110(c)(4) because it was not monitoring the disinfectant residual levels at representative locations throughout its distribution system.
26. The penalty that the ED proposes for STWA's violations considered in this case conform to the requirements of the Texas Health and Safety Code § 341.049 and the Commission's Penalty Policy.
27. STWA should be assessed a total administrative penalty of \$2,443 for the violations considered in this case.
28. STWA should be required to take corrective actions to bring its water system into compliance with all applicable water quality rules, including the minimum disinfectant residual requirements of the TCEQ's rules.

### III. ORDERING PROVISIONS

**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. Within 30 days after the effective date of this Commission Order, South Texas Water Authority shall pay an administrative penalty in the amount of \$2,443 for its violations of the Commission's rules as noted above and considered in this case.
2. Checks rendered to pay penalties imposed by this Order shall be made out to "TCEQ." Administrative penalty payments shall be sent with the notation "Re: South Texas Water Authority, TCEQ Docket No. 2011-1647-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

3. The payment of the administrative penalty listed herein and South Texas Water Authority's compliance with all the terms and conditions set forth in this Order will completely resolve the past violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.
4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to South Texas Water Authority if the Executive Director determines that South Texas Water Authority has not complied with one or more of the terms or conditions in this Order.
5. Immediately upon the effective date of this Commission Order, South Texas Water Authority shall:
  - a. Begin providing access to the Facility to allow entry to employees and agents of the TCEQ for the purpose of inspecting and investigating conditions related to the Facility, in accordance with 30 Texas Administrative Code § 290.46(a); and
  - b. Respond completely and adequately, as determined by the Executive Director, to all requests for information regarding these Ordering Provisions within 15 days after the date of such request or otherwise specified in writing by the Executive Director, provided that no other applicable response deadline is set out elsewhere in this Commission Order.

6. Within 30 days after the effective date of the Commission Order, South Texas Water Authority shall:
  - a. Check the accuracy of the continuous disinfectant analyzers using chlorine solutions of known concentrations or by comparing the results from the on-line analyzer with the results of an approved benchtop method at least once every seven (7) days and properly verify the analyzers used to determine the effectiveness of chloramination every ninety (90) days, in accordance with 30 Texas Administrative Code § 290.46(s)(2);
  - b. Locate, uncover, mark, document, and create a complete inventory of all existing sampling points, valves, and mains on all water lines, including the west branch, in accordance with 30 Texas Administrative Code § 290.46(n); and
  - c. Submit an up-to-date map of the Facility and as-built drawings of the chloramination facilities, in accordance with 30 Texas Administrative Code § 290.46(n).
7. Within 45 days after the effective date of the Commission Order, South Texas Water Authority shall:
  - a. Submit written certification in accordance with Ordering Provision No. 11 below, to demonstrate compliance with Ordering Provision No. 6.a.;
  - b. Submit an updated monitoring plan for the system, including an updated sampling plan, in accordance with 30 Texas Administrative Code § 290.121. The monitoring plan shall include the complete inventory created pursuant to Ordering Provision No. 6.b. above, including documentation showing the location of all existing sampling points, valves, and mains on all water lines, including the west branch; and
  - c. Submit a Nitrification Action Plan (“NAP”), in accordance with 30 Texas Administrative Code § 290.46(z), as well as Standard Operating Procedures for implementing the NAP and ensuring the sampling and monitoring plans referenced in Ordering Provision No. 7.b. are properly implemented.
8. Within 90 days after the effective date of this Commission Order, South Texas Water Authority shall:
  - a. Submit a progress report for the preceding 90-day period, and for each quarter thereafter, which shall include the following:
    - i. A brief summary of all actions taken and the results thereof during the preceding 90-day period, including implementation of the most recent monitoring plan and efforts made to maintain compliance with disinfectant residual levels; and

- ii. All sampling data gathered during the preceding 90-day period.

All quarterly progress reports shall be submitted to the TCEQ no later than the fifteenth (15) day after the end of each quarter. South Texas Water Authority shall continue to submit quarterly progress reports to the TCEQ until it can demonstrate at least 12 consecutive months of compliance with the disinfectant residual requirements.

- b. Submit documentation demonstrating the installation of any additional sampling taps and valves, in accordance with 30 Texas Administrative Code § 290.39;
- c. Submit an updated monitoring plan, including an updated sampling plan, reflecting the installation of any additional sampling taps and valves, in accordance with 30 Texas Administrative Code § 290.121;
- d. Submit for approval all plans and specifications to add ammonia boosting capabilities at the Driscoll Booster Station, in accordance with 30 Texas Administrative Code § 290.39. The plans and specifications shall be submitted to:

Plan Review Team, MC 159  
Water Supply Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- e. Submit, to the address listed in Ordering Provision No. 8.d. above, engineering plans, specifications, maps, and other pertinent information for proposed additional sampling points and valves, including the west branch, pursuant to 30 Texas Administrative Code § 290.46(n); and
  - f. Submit, to the address listed in Ordering Provision No. 8.d. above, a detailed engineering report that describes the strategies and facilities Respondent intends to employ to comply with the disinfectant residual requirement.
9. Within 180 days after the effective date of this Commission Order, South Texas Water Authority shall:
- a. Submit documentation demonstrating the installation of ammonia boosting capabilities at the Driscoll Booster Station, in accordance with 30 Texas Administrative Code §§ 290.39 and 290.110; and
  - b. Submit an updated monitoring plan, including an updated sampling plan, reflecting the installation of ammonia boosting capabilities at the Driscoll Booster Station, in accordance with 30 Texas Administrative Code § 290.121.

10. Within 730 days after the effective date of this Commission Order, South Texas Water Authority shall submit documentation demonstrating at least 12 consecutive months of compliance with the disinfectant residual requirements, in accordance with 30 Texas Administrative Code §§ 290.110 and 290.46.
11. All documents, reports, plans and other correspondence and information required to be submitted under these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/ or other records, shall be signed by Respondent, 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.”

Unless otherwise indicated, all documents, reports, plans, correspondence, information, supporting documents and certifications shall be submitted to:

Water Supply Division, MC 154  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

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

12. 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.
13. The effective date of this Order is the date the Order is final. Tex. Gov’t Code § 2001.144 and 30 Tex. Admin. Code § 80.273.
14. The Commission’s Chief Clerk shall forward a copy of this Order to South Texas Water Authority.
15. 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.

**SIGNED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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