

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

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner

V.

SOUTH TEXAS WATER AUTHORITY,
Respondent

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BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

CHIEF CLERKS OFFICE

2015 APR 24 PM 2:11

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**RESPONSE OF RESPONDENT TO THE EXECUTIVE DIRECTOR'S
MOTION TO REOPEN THE RECORD**

TO THE HONORABLE COMMISSIONERS:

The Respondent, South Texas Water Authority, opposes the Executive Director's Motion to Reopen the Record for the following reasons:

(1) At the Commission's November 20, 2013 agenda meeting, there was concern that the remedies for the violation alleged by the ED, i.e., the failure to maintain the chloramine residual in the Respondent's forty-two-inch (42") line in the vicinity of Kingsville, would cost somewhere between \$8,500,000 and \$37,500,000. To address this issue, Linda Brookins, Water Supply Division Director, made the following proposal:

"Let me see if I can help y'all through this. We have some resources in our division, some experts, that could go out to the site and evaluate the data. We've got experts on the staff that can look at data nationwide and we also know that EPA is looking at this issue and watching this case very closely and, in fact, we have a conference call with them today. They're working to try to close the loop on this so there's not these questions. We believe that we can work very closely with our funding entities to try to rank this, risk this, so that it might be eligible for some funding but I think our staff can take a stab at going out there, looking at all the potential options with our engineers, trying to come back and work with the applicant and look at our best options. And then work closely with EPA so they would recognize what we do here is compliant with the federal rules as well as our state rules that are equivalent to their rules. So we can definitely do a special study and I can commit some of my resources in the division to get a start looking at that, and bring that back for

consideration. The main thing here is protection of public health. And, I think that is the goal of everyone here. But try to do it in a reasonable cost. So, there might be a combination of things we need to do here. Maybe look at putting the best minds together of engineers looking at all options, working with our funding agencies, we do this every day, and see if we can get some partnerships here to come up with the best solution to propose to the applicant so we can move forward here. To study though, that doesn't solve the problem, we need to protect human health, and so we need to move forward with some solution out of this process. But giving us maybe, . . . we've got the holidays in front of us; I've got some other things I've got to send staff out on, but maybe could we have about 4 months maybe to get out to the field, look at the options, come back and propose some options with the applicant and 4 to 6 months would be helpful to look at all of that. In the meantime though, we need to do our best in doing disinfection and watching very closely those that are receiving this water, are producing the best quality drinking water."

Ms. Brookins committed to use the resources of the ED, of the Respondent, and of possible funding agencies, to make a study in the field, look at the options, and propose some options to address the problem.

As stated by the ED, the Commission continued the case "for the purpose of the ED Staff, with Respondent's cooperation, to conduct a study to determine if there are more cost-effective options on ensuring public health and safety regarding this issue." Commissioner Baker also asked the ED to review the rules and statutes and determine if some changes are appropriate or needed and if additional clarity and guidance can be provided in connection with the rules.

As stated by the ED, "then, the Commission continued this matter to allow for the study of cost-effective options for addressing Respondent's ability to maintain the required disinfectant residual toward the end of its distribution pipe near Kingsville, Texas." On motion the matter was continued for up to six months.

Neither of these two tasks have been performed. The Respondent is not aware of any report on how the rules and statutes can be clarified, and has not seen any results of "putting the best minds

together of engineers looking at all options, working with our funding agencies, we do this every day, and see if we can get some partnerships here to come up with the best solution to propose to the applicant so that we can move forward here.”

We note that the ED did not report back to the Commissioners by the six-month deadline, i.e., June 18, 2014. Instead, the ED staff held its first meeting with the Authority on May 23, 2014, less than one month before the June 18, 2014 agenda hearing. This was in spite of the fact that the Respondent contacted the ED three times to ask for a meeting, and that the Respondent reminded the ED that the six months between November 20, 2013 and June 18, 2014 would pass quickly. At the May 23, 2014 meeting, no suggestions were made by the ED staff. No report was made to the Commissioners by the June 18, 2014 agenda. We are now 18 months after the November 20, 2013 agenda hearing.

The Authority met again with the ED staff on March 11, 2015. At that meeting, the staff made a PowerPoint presentation, which did not include any proposal on how to solve the problem. A member of the ED staff made the remark that the ED staff is not the Respondent’s consulting engineer, and it was not its job to make any proposals to solve the problem.

At the March 11, 2015 meeting, the Authority, on its own motion, came up with a program to address the problem consisting of the following:

1. A free chlorine burn to remove the nitrification precipitants between Driscoll and Kingsville.
2. Improvements to the Driscoll disinfection injection system, which will require approval of the Authority’s Board.

3. Review of the one-year operation with Kingsville pursuant to which Kingsville is taking water pursuant to a bell-shaped curve to see if that moves enough water through the line to address the chloramine residual problem. The Authority also undertook to contact the City of Kingsville to negotiate a long-term contract, which, in conjunction with water to be taken by Ricardo, may solve the problem. (The Authority is scheduled to meet with Kingsville on May 1, 2015 to discuss the long term contract.)

The Respondent believes that, if Kingsville takes water pursuant to a bell-shaped curve whereby it takes more water during the hot summer months than during the cool winter months, this, together with Ricardo coming on line with its own 12-inch water line to take water directly from the delivery point at Kingsville, that there is a good chance that this will solve the problem.

The ED staff seemed receptive to these proposals, but apparently is now rejecting them.

The Respondent's problem is that the ED has not provided the report that it was directed to provide by the Commission. It wants a remand to SOAH to consider a report that no one has seen. The Respondent believes that the ED should present the report that it was directed to present at the November 20, 2013 agenda hearing before requesting a remand to SOAH.

The ED staff has not only failed to come up with any suggestions on how to solve the problem, but it has affirmatively thwarted the Respondent's efforts to move forward. The Respondent delivers water to Kingsville at its pump station on Sage Road through a 30-year-old 5-million-gallon tank. The tank is worn out. The three pumps providing water from the tank have long since worn out. Kingsville has cannibalized a pump and is using it on a temporary basis. Respondent has prepared plans and specifications, and has money, to build a new 1.0 million gallon

tank with pumps to replace the existing facility. At the meeting on March 11, 2015, the ED staff conceded that the Respondent has provided all the information that the staff needs to approve the plans and specifications. Nevertheless, the ED staff attorney said that the staff will not approve the plans and specifications until the parties signed an agreed order stipulating that the Respondent is a public water system. This agreed order may be years away. In the meantime, Respondent needs to be able to deliver water to Kingsville in amounts that follow a bell-shaped curve, with more water in the hotter months than in the winter months. There is every indication to believe that this procedure, along with the new 12-inch line built by Ricardo Water Supply Corporation that will take water directly off the Respondent's 42-inch line, will move enough water to maintain the chloramine residual. However, the ED staff is refusing to approve the plans and specifications, thereby preventing Respondent from moving forward.

Respondent has worked diligently to address the problem, without any help from the ED staff. In March 2011, Respondent constructed a new disinfection booster station near Driscoll to combine with any excess ammonia to prevent nitrification. Unfortunately, this did not work because the problem is that the water in the line does not move and the disinfectant dissipates.

Respondent has been successful in obtaining a one-year contract with Kingsville pursuant to which Kingsville is taking water pursuant to a bell-shaped curve. The contract became effective in October 2014, so the tests that will occur during the hot summer months have not yet occurred. They will occur in the months to come.

As stated earlier, Respondent is working on a three-pronged program, being a free chlorine burn, improvements to the disinfectant injection system, and obtaining a long-term contract with

Kingsville pursuant to which Respondent can rely on Kingsville taking water each year pursuant to the bell-shaped curve. Unfortunately, the ED staff has contributed nothing to these efforts.

CONCLUSION

The Respondent respectfully requests that the ED's request to remand this case to SOAH to reopen the record be denied, and that the ED staff be directed to finish the tasks that it undertook at the November 20, 2013 agenda hearing; namely, to make proposals directed to addressing Respondent's problem with the chloramine residual in the forty-two-inch (42") line in the vicinity of Kingsville, and to review the rules and statutes and determine if some changes are appropriate or needed and if additional clarity and guidance can be provided in connection with the rules.

The Respondent also requests that the ED's study be made available to the parties before any decision is made on whether to reopen the record to receive that study.

Respectfully submitted,

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ATTORNEYS FOR SOUTH TEXAS WATER
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CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with the ED's attorney and indicated that the Respondent would probably oppose the motion. This pleading is the Respondent's confirmation of its opposition.

By: Mike Willatt
Mike Willatt
Attorney for South Texas Water Authority

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2015, the foregoing original document and seven (7) copies were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas; the document was electronically filed with the Chief Clerk as well.

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

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