

**SOAH DOCKET NO. 582-11-9415
TCEQ DOCKET NO. 2011-2253-PWS-E**

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
Petitioner	§	
	§	
V.	§	STATE OFFICE OF
	§	
OLD TYMER ENTERPRISES, INC.;	§	
RN102404399	§	
Respondent	§	ADMINISTRATIVE HEARINGS

EXECUTIVE DIRECTOR’S EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE SARAH G. RAMOS (ALJ):

The Executive Director (“ED”) of the Texas Commission on Environmental Quality, after reviewing the Administrative Law Judge’s Proposal for Decision, files the following exceptions.

I. Caption

The ED respectfully recommends the TCEQ Docket Number be changed to reflect the change to the docket number in Order No. 3 to TCEQ DOCKET NO. 2011-2253-PWS-E.

II. Finding of Fact No. 7

The ED respectfully recommends a phrase be stricken as indicated below:

On September 15, 2011, the Executive Director (ED) filed the EDPRP in accordance with Tex. Health & Safety Code § 341.049(c), alleging that Respondent failed to collect routine distribution samples for coliform analysis ~~and failed to provide public notice of the failure to sample~~ for the months of August 2009 through May 2010 and failed to provide a public notification for the failure to collect routine distribution coliform samples for the months of August 2009 through April 2010, in violation of Tex. Health & Safety Code § 341.033(d) and 30 Tex. Admin. Code (TAC) §§ 290.109(c)(2)(A) and 290.122(c)(2)(B).

III. Finding of Fact No. 9.e.

The ED respectfully recommends that the word “Facillity” be changed to “Facility”.

IV. Conclusion of Law No. 5

The ED respectfully recommends that the underlined words be added as indicated below:

As required by Tex. Health & Safety Code § 341.049(d) and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP, Second Amended EDPRP and of the opportunity to request a hearing on the alleged violations or the penalties proposed therein.

V. Ordering Provision No. 1

The ED respectfully recommends that the underlined words be added as indicated below:

The payment shall be sent with the notation "Old Tymer Enterprises, Inc., Financial Administration Account No. 90150363; TCEQ Docket No. 2011-2253-PWS-E" to:

VI. Ordering Provision No. 4

The ED respectfully recommends that the underlined words be added as indicated below:

Within 30 days, Respondent will submit payment for all outstanding fees, interest, and penalties for TCEQ Financial Administration Account No. 90150363.

VII. Prayer

The ED respectfully requests the ALJ consider the ED's exception above.

Respectfully submitted,

Texas Commission on Environmental Quality

Zac Covar,
Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Kathleen C. Decker, Director
Litigation Division

by  

Jennifer Cook
State Bar of Texas No. 00789233
Stephanie J. Frazee
State Bar of Texas No. 24059778
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3693
(512) 239-3434 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2012, 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:

Via Electronic Filing

The Honorable Administrative Law Judge Sarah G. Ramos
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649
512-322-2061

Via Facsimile

Arturo D. Rodriguez
Russell & Rodriguez, L.L.P.
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628
Fax: 866-929-1641

Via Electronic Mail

Office of the Public Interest Counsel
Texas Commission on Environmental Quality
Mail Code 103



Jennifer Cook