

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Caterina R. Gonzalez, *Commissioner*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 1, 2024

Via Electronic Filing

The Honorable Dee Marlo Chico
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Re: Lil Countryside WSC
SOAH Docket No. 582-24-01474
TCEQ Docket No. 2021-1540-PWS-E
ED's Exceptions to the ALJ's Proposed Order

Dear Judge Chico:

Enclosed are the Executive Director's Exceptions to the ALJ's Proposed Order, for the above referenced case. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "William Hogan".

William Hogan
Staff Attorney
Office of Legal Services, Litigation Division
William.Hogan@tceq.texas.gov

Enclosure

cc: Tracey Lerich, President for Respondent
Pranjal Mehta, Office of Public Interest Counsel

**SOAH DOCKET NO. 582-24-01474
TCEQ DOCKET NO. 2021-1540-PWS-E**

**EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER
VS.
Lil Countryside WSC,
RESPONDENT**

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**BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS**

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

TO THE HONORABLE JUDGE CHICO:

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality, by and through William Hogan, a representative of TCEQ's Litigation Division, and respectfully files these exceptions to the Administrative Law Judge's ("ALJ's") Proposed Order ("Exceptions"). The ED agrees with the substance of the Proposed Order, and these recommended modifications are intended to provide greater clarity and correct typographical errors.¹

I.

On June 11, 2024, the Honorable ALJ issued the Proposed Order in this case. Pursuant to Title 30 of the Texas Administrative Code § 80.257, the ED respectfully recommends the following exceptions:

1. The proposed order's caption should be modified to reflect it as an order not only assessing administrative penalties but also requiring corrective actions of Respondent. Additionally, the second instance of "AN ORDER" should be removed as duplicative, the word "AN" should be inserted between "ASSESSING" and "ADMINISTRATIVE", and "PENALTIES" should be changed to "PENALTY" as, although the overall penalty is the product of multiple violations, the overall penalty itself will be assessed against Respondent as a singular amount.
2. Similarly, in the introductory paragraph of the Proposed Order, the relief sought by the ED through her EDPRP should be described as including the performance of corrective actions, and the phrase "administrative penalties" in the fourth line

¹ Copies of the Proposed Order with the recommended modifications are attached. Attachment A is a redline version and Attachment B is a copy of the Proposed Order incorporating all of the Executive Director's recommended changes.

should be changed to “an administrative penalty.”

3. In Finding of Fact No. 3, the word “at” should be replaced with “of,” because the investigator’s compliance investigation file review did not involve actually visiting the Facility’s physical location, but rather reviewing TCEQ files and records pertaining to the Facility, as reflected by Executive Director’s Exhibit ED-2 and the testimony of Jacolyn Saldaña.
4. In Finding of Fact No. 3(c), the word “site” in the fifth line should be changed to “sites,” as it is referring to the multiple sites which the samples at issue were incorrectly associated with.
5. In Finding of Fact No. 5, the words “for failing” should be replaced with “with several violations, including failure”, because the recognition that Respondent had completed corrective actions for the other violations occurred subsequent to the issuance of the EDPRP.
6. In Finding of Fact No. 9, the definite article “an” should be inserted between “issued” and “Order,” and the word “additional” should be inserted between “providing” and “notice”, to address SOAH’s order in the context after TCEQ’s previous issuance of a Notice of Hearing.
7. In Finding of Fact No. 11, there should be a comma after “No. 2” to set apart the date of the order as a parenthetical phrase.
8. In Finding of Fact No. 13, the first name of lead counsel for the Executive Director should be spelled “William”.
9. In Finding of Fact No. 18(a), the words “DLQORs) and did not change” should be replaced with “DLQORs), which did not enhance or reduce”. This clarifies the causal relationship between the finding of a single violation event and the lack of effect on the penalty amount.
10. In Findings of Fact Nos. 19(b) and 20(b), the word “100%” should be replaced with “any” to clarify that the finding of major harm was due to Respondent completely failing to comply with the relevant requirements, as opposed to failing to completely comply.
11. In Findings of Fact Nos. 19(c), 20(c), and 26(d), the words “major/Minor” should be

replaced with “major harm/Minor” to clarify the meaning of “major,” which is also a category of source types. Similarly, in Finding of Fact 21(c), the words “minor/Minor” should be replaced with “minor harm/Minor”.

12. In Findings of Fact Nos. 19(c), 20(c), 21(c), 22(c), 23(c), and 26(d):

- a. The words “based penalty” should be removed, as they are duplicative of the more accurate “base penalty” which follows immediately afterward in each instance; and
- b. The word “by” before the relevant percentage should be replaced with “to”, and the phrase “of that amount” should be inserted after the percentage, to clarify that the relevant percentage is the amount taken from the base penalty to become the adjusted base penalty.

13. Finding of Fact No. 19(d) should be rewritten to state “is a violation evaluated on a single-event basis with three discrete events, one for each missed DLQOR, resulting in a \$1,500 violation base penalty; and”. This clarifies the violation-event calculation for this violation: while the violation was assessed on the basis of single events, rather than a period of noncompliance, each DLQOR Respondent failed to submit was considered a separate single event, resulting in three total violation events.

14. In Finding of Fact No. 21(a), the words “management and” should be removed, for consistency with other Findings of Fact pertaining to recordkeeping violations.

15. In Finding of Fact No. 23, the indefinite article “a” should be added immediately before the word “required.”

16. In Conclusions of Law Nos. 6 and 7, the word “Respondent” should be replaced with “Respondent’s Facility”; while the Respondent is a water supply corporation, the term “PWS” refers to the physical components of the water supply system, rather than its ownership.

17. In Conclusion of Law No. 11, the letter “s” should be removed from the citation to 30 TEX. ADMIN. CODE § 290.122(c)(2)(A).

18. In Conclusion of Law No. 15, the words “provisions of” should be inserted between “with” and “the”, to clarify the scope of the Commission’s jurisdiction over the Texas Water Code and the Texas Health and Safety Code.

19. In Conclusion of Law No. 17, the phrase “, other than the violation pertaining to radionuclides sampling, for which the penalty may not exceed \$1,000 per day” should be inserted between the word “case” and the period, to clarify the applicable maximum penalty for that violation.
20. In Ordering Provision No. 1, the words “Financial Administration Account No. 91160097” should be replaced with “TCEQ Docket No. 2021-1540-PWS-E”, because TCEQ uses different Financial Administration Account numbers for a regulated entity’s fees than it does for its penalties.
21. In Ordering Provision No. 2, the words “a laboratory certified by the Executive Director of” should be inserted between “to” and “TCEQ.” TCEQ does not receive such samples directly, but rather receives the results of analysis of such samples from certified laboratories. *See* 30 TEX. ADMIN. CODE § 290.109(e) (“Testing for microbial contaminants shall be performed at a laboratory certified by the executive director.”).

II.

WHEREFORE, PREMISES CONSIDERED, the ED provides these Exceptions to the ALJ's Proposed Order, so that justice may be done.

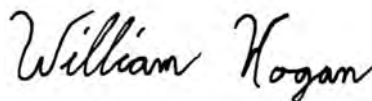
Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Executive Director

Erin E. Chancellor, Director
Office of Legal Services

Gitanjali Yadav, Deputy Director
Litigation Division



William Hogan
State Bar of Texas No. 24126017
Texas Commission on Environmental Quality
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400 (Phone)
William.Hogan@tceq.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2024, the foregoing Executive Director's Exceptions to Administrative Law Judge's Proposed Order ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day, true and correct copies of the foregoing Exceptions were sent to the following persons via the methods indicated below:

Tracey Lerich, President
Lil Countryside Water Supply Corporation
9077 Private Road 2329
Terrell, Texas 75160

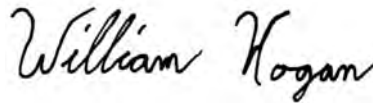
Via First Class Mail

The Honorable Judge Dee Marlo Chico
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Via Electronic Filing

Pranjal Mehta
Office of Public Interest Counsel, MC 103
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Pranjal.Mehta@tceq.texas.gov

Via Electronic Mail



William Hogan, Staff Attorney
Texas Commission on Environmental Quality
Office of Legal Services, Litigation Division

ATTACHMENT A
Redlined Proposed Order



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER
~~AN ORDER~~ ASSESSING AN ADMINISTRATIVE PENALTIES
AGAINST AND REQUIRING CORRECTIVE ACTIONS OF LIL
COUNTRYSIDE WATER SUPPLY CORPORATION
TCEQ DOCKET NO. 2021-1540-PWS-E
SOAH DOCKET NO. 582-24-01474

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing an administrative penaltyies against and requiring corrective actions of Lil Countryside Water Supply Corporation. A Proposal for Decision (PFD) was drafted by State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Dee Marlo Chico, who conducted an evidentiary hearing concerning the EDPRP on April 11, 2024.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

I. Findings of Fact

1. Lil Countryside Water Supply Corporation (Respondent) owns and operates a public water system (PWS) located at 1735 County Road 2320 in Terrell, Hunt County, Texas (Facility).

2. Respondent has one groundwater well as its water source, has 15 service connections, and serves 27 individuals.
3. A TCEQ investigator conducted a compliance investigation ~~at~~of the Facility from October 18, 2021, through November 12, 2021, and documented that Respondent failed to:
 - a. Submit a Disinfection Level Quarterly Operating Report (DLQOR) to the Executive Director (ED) of TCEQ by the tenth day of the month following the end of each quarter for the fourth quarter of 2020, first quarter of 2021, and second quarter of 2021.
 - b. Mail or directly deliver one copy of the Consumer Confidence Report (CCR) for 2020 to each bill paying customer by July 1 for each year and failed to submit to TCEQ by July 1 a copy of the annual CCR and certification that the CCR has been distributed to Respondent's customers and that the information in the CCR is correct and consistent with the compliance monitoring data.
 - c. Collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2020, through December 31, 2020, monitoring period. Specifically, the samples were collected from approved sites but associated with incorrect sample sites on the chain of custody form and were invalidated.
 - d. Collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2017 through December 31, 2019 monitoring period and failed to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure.
 - e. Collect, within 24 hours of notification of the routine distribution total coliform-positive samples on April 20, 2021, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each of the active groundwater sources in use at the time the distribution coliform-positive samples were collected.

- f. Pay annual Public Health Service (PHS) fees and/or any associated late fees for TCEQ Financial Administration Account No. 91160097 for Fiscal Years 2006 through 2021.
 - g. Provide the results of radionuclides sampling to the ED for the January 1, 2013, through December 31, 2018, monitoring period.
- 4. On June 27, 2023, the ED sent Respondent the EDPRP, which recommended TCEQ enter an enforcement order assessing administrative penalties and requiring corrective actions against Respondent.
- 5. The ED recommended the imposition of a \$4,635 administrative penalty and corrective action to bring Respondent into compliance for failing with several violations, including failure to obtain a groundwater source *Escherichia coli* sample.
- 6. On July 24, 2023, Respondent requested a contested case hearing on the allegations in the EDPRP.
- 7. On September 11, 2023, the ED requested referral of this case to SOAH.
- 8. On September 25, 2023, the ED issued a Notice of Hearing.
- 9. On October 18, 2023, the ALJ issued an Order providing additional notice of the preliminary hearing.
- 10. On October 26, 2023, a preliminary hearing was held by ALJ Dee Marlo Chico and jurisdictional exhibits were admitted into evidence.
- 11. SOAH Order No. 2, issued October 27, 2023, set the hearing on the merits and provided participation instructions. On February 14, 2024, an ALJ granted a motion for continuance and entered Order No. 4 that rescheduled the hearing to April 11, 2024.
- 12. Together, the Notice of Hearing and SOAH Order No. 4 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 either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or

petition filed with the state agency.

13. SOAH ALJ Dee Marlo Chico convened the hearing by videoconference on April 11, 2024. Attorneys William Hogan and Jess Robinson represented the ED. Respondent appeared through its representative and president, Tracey Lerich. Attorney Pranjal Mehta represented the Office of Public Interest Counsel. The record closed on April 12, 2024, with the filing of admitted exhibits.
14. Respondent caused, suffered, allowed, or permitted the performance of an activity in violation of chapter 341 of the Texas Health and Safety Code and Commission rules.
15. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective January 28, 2021.
16. Pursuant to the Commission's Penalty Policy, the Facility is a minor source.
17. Respondent has five prior Notices of Violations with same or similar violations as those in this enforcement action and one other Notice of Violation with dissimilar violations.
18. Each violation under the Penalty Policy appropriately:
 - a. was considered a single event (except for the violation relating to submission of the DLQORs), which did not enhance or reduce and did not change the penalty amount;
 - b. did not receive a penalty reduction for good faith efforts to comply because Respondent did not completely resolve the violations consistent with the TCEQ's Penalty Policy; and
 - c. did not receive an adjustment for avoided or delayed costs because Respondent is a non-profit organization or a governmental authority that is not subject to an economic benefit enhancement.
19. Under the Penalty Policy, the violation for failure to submit DLQORs:
 - a. is a recordkeeping violation appropriately analyzed under the

Programmatic Penalty Matrix;

- b. falls under the major category from a Minor Source because Respondent did not meet ~~any~~100% of the requirement to submit the DLQORs to the ED;
 - c. reduced the \$5,000 ~~based-penalty~~ base penalty ~~to~~by 10% ~~of that amount~~, as a result of the major/Minor Source characterization of the violation resulting in an adjusted base penalty of \$500;
 - d. is a violation ~~evaluated on a single-event basis with three discrete events, one for each missed DLQOR, with three discrete events that is appropriately classified as a single event resulting~~ in a \$1,500 violation base penalty; and
 - e. accordingly has a violation subtotal of \$1,500.
20. Under the Penalty Policy, the violation for failure to deliver a copy of the CCR to customers and certify to the ED that the CCR has been distributed:
- a. is a recordkeeping violation appropriately analyzed under the Programmatic Penalty Matrix;
 - b. falls under the major category from a Minor Source because Respondent did not meet ~~any~~100% of the requirement to deliver one copy of the CCR to customers;
 - c. reduced the \$5,000 ~~based-penalty~~ base penalty ~~to~~by 10% ~~of that amount~~, as a result of the major/Minor Source characterization of the violation; and
 - d. accordingly has a violation subtotal of \$500.
21. Under the Penalty Policy, the violation for failure to collect lead and copper tap samples at the required sample sites:
- a. is a ~~management and~~ recordkeeping violation appropriately analyzed under the Programmatic Penalty Matrix;
 - b. falls under the minor category from a Minor Source because less than

30% of the rule requirement was not met;

- c. reduced the \$5,000 ~~based penalty~~ base penalty ~~to~~by 1% of that amount, as a result of the minor harm/Minor Source characterization of the violation; and
 - d. accordingly has a violation subtotal of \$50.
- 22. Under the Penalty Policy, the violation for failure to collect lead and copper tap samples and report the results to the ED:
 - a. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - b. created the potential for a release of contaminants into the environment that could cause major harm;
 - c. reduced the \$5,000 ~~based penalty~~ base penalty ~~to~~by 15% of that amount, as a result of the potential/major characterization of the violation; and
 - d. accordingly has a violation subtotal of \$750.
- 23. Under the Penalty Policy, the violation for failure to collect a required *Escherichia coli* (or other approved fecal indicator) sample:
 - a. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - b. created the potential for a release of contaminants into the environment that could cause major harm;
 - c. reduced the \$5,000 ~~based penalty~~ base penalty ~~to~~by 15% of that amount, as a result of the potential/major characterization of the violation; and
 - d. accordingly has a violation subtotal of \$750.
- 24. The violation subtotal for Respondent's failure to pay annual PHS fees is \$0, because the ED does not seek a penalty for this violation.
- 25. The total base penalty for Findings of Fact Nos. 18 through 23 totaled \$3,550. Under the Penalty Policy, Respondent's compliance history appropriately increased the base penalty total by 27%. This enhancement resulted in a

penalty amount of \$4,508.

26. Under the Penalty Policy, the violation for failure to report the results of radionuclides sampling:
 - a. appropriately begins with a base penalty of \$1,000;
 - b. is a recordkeeping violation appropriately analyzed under the Programmatic Penalty Matrix;
 - c. the degree of noncompliance falls under the major category because 100% of the rule requirement was not met;
 - d. reduced the \$1,000 ~~based penalty~~ base penalty ~~to~~by 10% ~~of that amount~~, as a result of the major ~~harm~~/Minor Source characterization of the violation resulting in a violation subtotal of \$100;
 - e. enhanced the amount by 27% for Respondent's compliance history; and
 - f. accordingly has a penalty amount of \$127.
27. The penalty amount for Respondent's seven violations totaled \$4,635.
28. The ED's proposed \$4,635 administrative penalty is reasonable and justified.
29. Respondent did not produce all financial records that would be potentially relevant to the issue of Respondent's ability to pay the penalty.

II. Conclusions of Law

1. The Commission has enforcement jurisdiction over violations of the state's drinking water program. Tex. Health & Safety Code § 341.049; Tex. Water Code §§ 5.013, 7.002.
2. Under Texas Water Code section 7.002, Respondent is subject to the Commission's enforcement authority.
3. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.

4. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties and corrective action. Tex. Gov't Code §§ 2001.051-.052; Tex. Water Code § 7.058.
5. The ED has the burden of proof by a preponderance of the evidence in an enforcement proceeding. Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. 30 Tex. Admin. Code § 80.17(b).
6. Respondent's Facility is a PWS. 30 Tex. Admin. Code § 290.38(73).
7. Respondent's Facility is a community PWS. 30 Tex. Admin. Code § 290.38(17).
8. Respondent violated 30 Texas Administrative Code section 290.110(e)(4)(A) and committed a reporting violation under 30 Texas Administrative Code section 290.110(f)(3) when it failed to submit a DLQOR to the ED by the tenth day of the month following the end of each quarter for the fourth quarter of 2020, first quarter of 2021, and second quarter of 2021.
9. Respondent violated 30 Texas Administrative Code sections 290.271(b) and 290.274(b) and (c) when it (1) failed to mail or directly deliver one copy of the CCR for 2020 to each bill paying customer by July 1 for each year and (2) failed to submit to TCEQ by July 1 a copy of the annual CCR and certification that the CCR has been distributed to Respondent's customers and that the information in the CCR is correct and consistent with the compliance monitoring data.
10. Respondent violated 30 Texas Administrative Code sections 290.117(h) and (i)(1) when it failed to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2020, through December 31, 2020, monitoring period. Specifically, Respondent's samples were collected from approved sites but associated with the incorrect sample site on the chain of custody form and were invalidated.
11. Respondent violated 30 Texas Administrative Code sections 290.117(c)(2)(C), (h), and (i)(1) and ~~s~~290.122(c)(2)(A) and (f) when it failed to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2017 through

December 31, 2019 monitoring period and failed to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure.

12. Respondent violated 30 Texas Administrative Code section 290.109(d)(4)(B) when it failed to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on April 20, 2021, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each of the active groundwater sources in use at the time the distribution coliform-positive samples were collected.
13. Respondent violated Texas Water Code section 5.702 and 30 Texas Administrative Code section 290.51(a)(6) when it failed to pay its annual PHS fees and/or any associated late fees for TCEQ Financial Administration Account No. 91160097 for Fiscal Years 2006 through 2021.
14. Respondent violated 30 Texas Administrative Code section 290.108(e) when it failed to provide the results of radionuclides sampling to the ED for the January 1, 2013, through December 31, 2018, monitoring period.
15. The Commission is authorized to impose administrative penalties and order corrective measures to ensure compliance with provisions of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction provided by Texas Water Code section 5.013 and rules adopted under these provisions. Tex. Water Code § 7.002.
16. In determining the amount of an administrative penalty, the Commission must consider several factors and the Penalty Policy implements those factors. Tex. Health & Safety Code § 341.049(b).
17. The administrative penalty may not exceed \$5,000 per violation, per day, for the violations at issue in this case, other than the violation pertaining to radionuclides sampling, for which the penalty may not exceed \$1,000 per day. Tex. Health & Safety Code § 341.049(a).
18. The penalty that the ED proposed for Respondent's violations in this case conforms to the requirements of Texas Water Code chapter 7, Texas Health and Safety Code section 341.049, and the Commission's Penalty Policy.

19. Respondent should be assessed a total administrative penalty of \$4,635 for the violations proven by the ED in this case.
20. Respondent should be required to implement the corrective actions set out below.
21. Respondent has the burden of proving that a lesser penalty is justified due to its financial circumstances. 30 Tex. Admin. Code § 70.8(a).
22. Because Respondent has not provided all potentially relevant financial records, Respondent has waived its claim of financial inability to pay. 30 Tex. Admin. Code § 70.8(b).

NOW, THEREFORE, IT IS 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 Order, Respondent shall submit payment of the \$4,635 administrative penalty. Checks rendered to pay penalties imposed by this Order shall be sent with the notation “Lil Countryside WSC, TCEQ Docket No. 2021-1540-PWS-EFinancial Administration Account No. 91160097” to

Financial Administration Division, Revenue Operations Section
Attention: Cashier’s Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. Within 30 days after the effective date of this Order, Respondent shall collect one groundwater source *Escherichia coli* sample from the groundwater source in use at the Facility at the time the distribution coliform-positive samples were collected. Respondent shall also submit the sample and any supporting documentation to a laboratory certified by the Executive Director of TCEQ.
3. Within 45 days after the effective date of this Order, Respondent shall submit written certification of compliance with the corrective action in paragraph No. 2 above, in accordance with the following:

- a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or 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.”

- b. Respondent shall submit the written certification and documentation necessary to demonstrate compliance to

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

and:

Section Manager, Public Drinking Water
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. The payment of the administrative penalty and performance of the corrective action will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective action or penalties for other violations that are not raised here.
5. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the ED determines that Respondent has not complied with one or more of the terms or conditions in this Order.

6. 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, are denied.
7. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code section 80.273 and Texas Government Code section 2001.144.
8. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
9. 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.

ISSUED:

Texas Commission on Environmental Quality

Jon Niermann, Chairman for the Commission

ATTACHMENT B
Proposed Order Incorporating ED's Recommended Changes



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER ASSESSING AN ADMINISTRATIVE PENALTY AGAINST AND REQUIRING CORRECTIVE ACTIONS OF LIL COUNTRYSIDE WATER SUPPLY CORPORATION TCEQ DOCKET NO. 2021-1540-PWS-E SOAH DOCKET NO. 582-24-01474

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing an administrative penalty against and requiring corrective actions of Lil Countryside Water Supply Corporation. A Proposal for Decision (PFD) was drafted by State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Dee Marlo Chico, who conducted an evidentiary hearing concerning the EDPRP on April 11, 2024.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

I. Findings of Fact

1. Lil Countryside Water Supply Corporation (Respondent) owns and operates a public water system (PWS) located at 1735 County Road 2320 in Terrell, Hunt County, Texas (Facility).

2. Respondent has one groundwater well as its water source, has 15 service connections, and serves 27 individuals.
3. A TCEQ investigator conducted a compliance investigation of the Facility from October 18, 2021, through November 12, 2021, and documented that Respondent failed to:
 - a. Submit a Disinfection Level Quarterly Operating Report (DLQOR) to the Executive Director (ED) of TCEQ by the tenth day of the month following the end of each quarter for the fourth quarter of 2020, first quarter of 2021, and second quarter of 2021.
 - b. Mail or directly deliver one copy of the Consumer Confidence Report (CCR) for 2020 to each bill paying customer by July 1 for each year and failed to submit to TCEQ by July 1 a copy of the annual CCR and certification that the CCR has been distributed to Respondent's customers and that the information in the CCR is correct and consistent with the compliance monitoring data.
 - c. Collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2020, through December 31, 2020, monitoring period. Specifically, the samples were collected from approved sites but associated with incorrect sample sites on the chain of custody form and were invalidated.
 - d. Collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2017 through December 31, 2019 monitoring period and failed to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure.
 - e. Collect, within 24 hours of notification of the routine distribution total coliform-positive samples on April 20, 2021, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each of the active groundwater sources in use at the time the distribution coliform-positive samples were collected.

- f. Pay annual Public Health Service (PHS) fees and/or any associated late fees for TCEQ Financial Administration Account No. 91160097 for Fiscal Years 2006 through 2021.
 - g. Provide the results of radionuclides sampling to the ED for the January 1, 2013, through December 31, 2018, monitoring period.
- 4. On June 27, 2023, the ED sent Respondent the EDPRP, which recommended TCEQ enter an enforcement order assessing administrative penalties and requiring corrective actions against Respondent.
- 5. The ED recommended the imposition of a \$4,635 administrative penalty and corrective action to bring Respondent into compliance with several violations, including failure to obtain a groundwater source *Escherichia coli* sample.
- 6. On July 24, 2023, Respondent requested a contested case hearing on the allegations in the EDPRP.
- 7. On September 11, 2023, the ED requested referral of this case to SOAH.
- 8. On September 25, 2023, the ED issued a Notice of Hearing.
- 9. On October 18, 2023, the ALJ issued an Order providing additional notice of the preliminary hearing.
- 10. On October 26, 2023, a preliminary hearing was held by ALJ Dee Marlo Chico and jurisdictional exhibits were admitted into evidence.
- 11. SOAH Order No. 2, issued October 27, 2023, set the hearing on the merits and provided participation instructions. On February 14, 2024, an ALJ granted a motion for continuance and entered Order No. 4 that rescheduled the hearing to April 11, 2024.
- 12. Together, the Notice of Hearing and SOAH Order No. 4 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 either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or

petition filed with the state agency.

13. SOAH ALJ Dee Marlo Chico convened the hearing by videoconference on April 11, 2024. Attorneys William Hogan and Jess Robinson represented the ED. Respondent appeared through its representative and president, Tracey Lerich. Attorney Pranjal Mehta represented the Office of Public Interest Counsel. The record closed on April 12, 2024, with the filing of admitted exhibits.
14. Respondent caused, suffered, allowed, or permitted the performance of an activity in violation of chapter 341 of the Texas Health and Safety Code and Commission rules.
15. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective January 28, 2021.
16. Pursuant to the Commission's Penalty Policy, the Facility is a minor source.
17. Respondent has five prior Notices of Violations with same or similar violations as those in this enforcement action and one other Notice of Violation with dissimilar violations.
18. Each violation under the Penalty Policy appropriately:
 - a. was considered a single event (except for the violation relating to submission of the DLQORs), which did not enhance or reduce the penalty amount;
 - b. did not receive a penalty reduction for good faith efforts to comply because Respondent did not completely resolve the violations consistent with the TCEQ's Penalty Policy; and
 - c. did not receive an adjustment for avoided or delayed costs because Respondent is a non-profit organization or a governmental authority that is not subject to an economic benefit enhancement.
19. Under the Penalty Policy, the violation for failure to submit DLQORs:
 - a. is a recordkeeping violation appropriately analyzed under the

Programmatic Penalty Matrix;

- b. falls under the major category from a Minor Source because Respondent did not meet any of the requirement to submit the DLQORs to the ED;
 - c. reduced the \$5,000 base penalty to 10% of that amount, as a result of the major/Minor Source characterization of the violation resulting in an adjusted base penalty of \$500;
 - d. is a violation evaluated on a single-event basis with three discrete events, one for each missed DLQOR, in a \$1,500 violation base penalty; and
 - e. accordingly has a violation subtotal of \$1,500.
20. Under the Penalty Policy, the violation for failure to deliver a copy of the CCR to customers and certify to the ED that the CCR has been distributed:
- a. is a recordkeeping violation appropriately analyzed under the Programmatic Penalty Matrix;
 - b. falls under the major category from a Minor Source because Respondent did not meet any of the requirement to deliver one copy of the CCR to customers;
 - c. reduced the \$5,000 base penalty to 10% of that amount, as a result of the major/Minor Source characterization of the violation; and
 - d. accordingly has a violation subtotal of \$500.
21. Under the Penalty Policy, the violation for failure to collect lead and copper tap samples at the required sample sites:
- a. is a recordkeeping violation appropriately analyzed under the Programmatic Penalty Matrix;
 - b. falls under the minor category from a Minor Source because less than 30% of the rule requirement was not met;
 - c. reduced the \$5,000 base penalty to 1% of that amount, as a result of the minor harm/Minor Source characterization of the violation; and

- d. accordingly has a violation subtotal of \$50.
22. Under the Penalty Policy, the violation for failure to collect lead and copper tap samples and report the results to the ED:
- a. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - b. created the potential for a release of contaminants into the environment that could cause major harm;
 - c. reduced the \$5,000 base penalty to 15% of that amount, as a result of the potential/major characterization of the violation; and
 - d. accordingly has a violation subtotal of \$750.
23. Under the Penalty Policy, the violation for failure to collect a required *Escherichia coli* (or other approved fecal indicator) sample:
- a. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - b. created the potential for a release of contaminants into the environment that could cause major harm;
 - c. reduced the \$5,000 base penalty to 15% of that amount, as a result of the potential/major characterization of the violation; and
 - d. accordingly has a violation subtotal of \$750.
24. The violation subtotal for Respondent's failure to pay annual PHS fees is \$0, because the ED does not seek a penalty for this violation.
25. The total base penalty for Findings of Fact Nos. 18 through 23 totaled \$3,550. Under the Penalty Policy, Respondent's compliance history appropriately increased the base penalty total by 27%. This enhancement resulted in a penalty amount of \$4,508.
26. Under the Penalty Policy, the violation for failure to report the results of radionuclides sampling:
- a. appropriately begins with a base penalty of \$1,000;

- b. is a recordkeeping violation appropriately analyzed under the Programmatic Penalty Matrix;
 - c. the degree of noncompliance falls under the major category because 100% of the rule requirement was not met;
 - d. reduced the \$1,000 base penalty to 10% of that amount, as a result of the major harm/Minor Source characterization of the violation resulting in a violation subtotal of \$100;
 - e. enhanced the amount by 27% for Respondent's compliance history; and
 - f. accordingly has a penalty amount of \$127.
27. The penalty amount for Respondent's seven violations totaled \$4,635.
 28. The ED's proposed \$4,635 administrative penalty is reasonable and justified.
 29. Respondent did not produce all financial records that would be potentially relevant to the issue of Respondent's ability to pay the penalty.

II. Conclusions of Law

1. The Commission has enforcement jurisdiction over violations of the state's drinking water program. Tex. Health & Safety Code § 341.049; Tex. Water Code §§ 5.013, 7.002.
2. Under Texas Water Code section 7.002, Respondent is subject to the Commission's enforcement authority.
3. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
4. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties and corrective action. Tex. Gov't Code §§ 2001.051-.052; Tex. Water Code § 7.058.
5. The ED has the burden of proof by a preponderance of the evidence in an enforcement proceeding. Respondent has the burden of proving by a

preponderance of the evidence all elements of any affirmative defense asserted. 30 Tex. Admin. Code § 80.17(b).

6. Respondent's Facility is a PWS. 30 Tex. Admin. Code § 290.38(73).
7. Respondent's Facility is a community PWS. 30 Tex. Admin. Code § 290.38(17).
8. Respondent violated 30 Texas Administrative Code section 290.110(e)(4)(A) and committed a reporting violation under 30 Texas Administrative Code section 290.110(f)(3) when it failed to submit a DLQOR to the ED by the tenth day of the month following the end of each quarter for the fourth quarter of 2020, first quarter of 2021, and second quarter of 2021.
9. Respondent violated 30 Texas Administrative Code sections 290.271(b) and 290.274(b) and (c) when it (1) failed to mail or directly deliver one copy of the CCR for 2020 to each bill paying customer by July 1 for each year and (2) failed to submit to TCEQ by July 1 a copy of the annual CCR and certification that the CCR has been distributed to Respondent's customers and that the information in the CCR is correct and consistent with the compliance monitoring data.
10. Respondent violated 30 Texas Administrative Code sections 290.117(h) and (i)(1) when it failed to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2020, through December 31, 2020, monitoring period. Specifically, Respondent's samples were collected from approved sites but associated with the incorrect sample site on the chain of custody form and were invalidated.
11. Respondent violated 30 Texas Administrative Code sections 290.117(c)(2)(C), (h), and (i)(1) and 290.122(c)(2)(A) and (f) when it failed to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2017 through December 31, 2019 monitoring period and failed to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure.
12. Respondent violated 30 Texas Administrative Code section 290.109(d)(4)(B) when it failed to collect, within 24 hours of notification of the routine

distribution total coliform-positive samples on April 20, 2021, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each of the active groundwater sources in use at the time the distribution coliform-positive samples were collected.

13. Respondent violated Texas Water Code section 5.702 and 30 Texas Administrative Code section 290.51(a)(6) when it failed to pay its annual PHS fees and/or any associated late fees for TCEQ Financial Administration Account No. 91160097 for Fiscal Years 2006 through 2021.
14. Respondent violated 30 Texas Administrative Code section 290.108(e) when it failed to provide the results of radionuclides sampling to the ED for the January 1, 2013, through December 31, 2018, monitoring period.
15. The Commission is authorized to impose administrative penalties and order corrective measures to ensure compliance with provisions of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction provided by Texas Water Code section 5.013 and rules adopted under these provisions. Tex. Water Code § 7.002.
16. In determining the amount of an administrative penalty, the Commission must consider several factors and the Penalty Policy implements those factors. Tex. Health & Safety Code § 341.049(b).
17. The administrative penalty may not exceed \$5,000 per violation, per day, for the violations at issue in this case, other than the violation pertaining to radionuclides sampling, for which the penalty may not exceed \$1,000 per day. Tex. Health & Safety Code § 341.049(a).
18. The penalty that the ED proposed for Respondent's violations in this case conforms to the requirements of Texas Water Code chapter 7, Texas Health and Safety Code section 341.049, and the Commission's Penalty Policy.

19. Respondent should be assessed a total administrative penalty of \$4,635 for the violations proven by the ED in this case.
20. Respondent should be required to implement the corrective actions set out below.
21. Respondent has the burden of proving that a lesser penalty is justified due to its financial circumstances. 30 Tex. Admin. Code § 70.8(a).
22. Because Respondent has not provided all potentially relevant financial records, Respondent has waived its claim of financial inability to pay. 30 Tex. Admin. Code § 70.8(b).

NOW, THEREFORE, IT IS 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 Order, Respondent shall submit payment of the \$4,635 administrative penalty. Checks rendered to pay penalties imposed by this Order shall be sent with the notation “Lil Countryside WSC, TCEQ Docket No. 2021-1540-PWS-E” to

Financial Administration Division, Revenue Operations Section
Attention: Cashier’s Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Within 30 days after the effective date of this Order, Respondent shall collect one groundwater source *Escherichia coli* sample from the groundwater source in use at the Facility at the time the distribution coliform-positive samples were collected. Respondent shall also submit the sample and any supporting documentation to a laboratory certified by the Executive Director of TCEQ.
3. Within 45 days after the effective date of this Order, Respondent shall submit written certification of compliance with the corrective action in paragraph No. 2 above, in accordance with the following:

- a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or 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.”

- b. Respondent shall submit the written certification and documentation necessary to demonstrate compliance to

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

and:

Section Manager, Public Drinking Water
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. The payment of the administrative penalty and performance of the corrective action will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective action or penalties for other violations that are not raised here.
5. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the ED determines that Respondent has not complied with one or more of the terms or conditions in this Order.

6. 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, are denied.
7. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code section 80.273 and Texas Government Code section 2001.144.
8. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
9. 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.

ISSUED:

Texas Commission on Environmental Quality

Jon Niermann, Chairman for the Commission