

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

June 11, 2024

William Hogan

VIA EFILE TEXAS

Pranjal Mehta

VIA EFILE TEXAS

Tracey Lerich
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VIA REGULAR MAIL

RE: Docket Number 582-24-01474; Texas Commission on Environmental Quality No. 2021-1540-PWS-E; *Executive Director of the Texas Commission on Environmental Quality v. Lil Countryside Water Supply Corporation*

Dear Parties:

Please find attached a Proposal for Decision (PFD) in this case. Any party may, within 20 days after the date of issuance of the PFD, file exceptions or briefs. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies along with certification of service to the above parties and the ALJ shall be filed with the Chief Clerk of the TCEQ electronically at <http://www14.tceq.texas.gov/epic/eFiling/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
PETITIONER
v.
LIL COUNTRYSIDE WATER SUPPLY CORPORATION,
RESPONDENT**

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V.

**LIL COUNTRYSIDE WATER SUPPLY CORPORATION,
RESPONDENT**

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleged Lil Countryside Water Supply Corporation (Respondent or Lil Countryside WSC) violated the Texas Health and Safety Code, Texas Water Code, and Commission rules pertaining to public water systems (PWSs) and recommends the Commission enter an order assessing an administrative penalty for these violations and order Respondent to take corrective actions. The Administrative Law Judge (ALJ) finds the ED proved the alleged violations by a preponderance of the evidence and recommends that Respondent be

required to pay an administrative penalty of \$4,635 and complete the recommended corrective action to resolve the violation related to failing to obtain a groundwater source *Escherichia coli* (*E. Coli*) sample.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed and are addressed in the attached proposed order. The hearing on the merits convened by videoconference on April 11, 2024, before ALJ Dee Marlo Chico of the State Office of Administrative Hearings (SOAH). 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 (OPIC). The hearing concluded and the record closed the same day upon filing of the admitted exhibits.

II. APPLICABLE LAW

Texas Health and Safety Code chapter 341 prescribes the duties of the Commission relating to the regulation and control of PWSs in the state.¹ The Commission has enforcement jurisdiction over violations of the state's drinking water program.² A PWS is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances that must have at least

¹ See Tex. Health & Safety Code § 341.0315(a), (c) (ensuring the supply safe drinking water in adequate quantities and are technically sound).

² Tex. Health & Safety Code § 341.049; Tex. Water Code §§ 5.013, 7.002.

15 service connections or serve at least 25 individuals at least 60 days out of the year.³ A community water system is a PWS that has a potential to serve at least 15 residential service connections on a year-round basis or serve at least 25 residents on a year-round basis.⁴

A. LAWS RELATED TO ALLEGED VIOLATIONS

Disinfectant Residuals. TCEQ requires all PWS to disinfect the water in its distribution system.⁵ Any owner or operator of a PWS is required to report to the ED the results of any test, measurements, or analysis to maintain the acceptable disinfectant residuals in the distribution system.⁶ A PWS that uses purchased water or groundwater sources must complete a Disinfection Level Quarterly Operating Report (DLQOR) each quarter.⁷ Community PWS must submit the DLQOR each quarter, by the tenth day of the month following the end of the quarter.⁸ Failure to report the results of the monitoring tests as required is a reporting violation.⁹

Annual Reports to Customers. Each community PWS must provide to its customers an annual report that contains information on the quality of the water

³ 30 Tex. Admin. Code § 290.38(73).

⁴ 30 Tex. Admin. Code § 290.38(17).

⁵ 30 Tex. Admin. Code § 290.110(a).

⁶ 30 Tex. Admin. Code § 290.110(e).

⁷ 30 Tex. Admin. Code § 290.110(e)(4).

⁸ 30 Tex. Admin. Code § 290.110(e)(4)(A).

⁹ 30 Tex. Admin. Code § 290.110(f)(3).

delivered by the system and characterizes any risk from exposure to contaminants detected in the drinking water in an accurate and understandable manner.¹⁰ Since this report must be delivered to each customer, the PWS shall make a good-faith effort to reach consumers who are served by the system but are not bill-paying customers (e.g., renters).¹¹ Each community PWS shall then (1) certify to the ED that the report has been distributed and the information in the report is correct and consistent with the compliance monitoring data previously submitted to the ED, and (2) mail the certification and a copy of the report to the ED by July 1 of each year.¹²

Regulation of Lead and Copper. Community PWS must control the levels of lead and copper in the drinking water and shall sample for lead and copper at sites approved by and at a frequency set by the ED.¹³ The reduced monitoring level for lead is 0.005 milligrams per liter (mg/L)¹⁴ and for copper is 0.65 mg/L.¹⁵ Systems with levels of lead and copper less than these reduced monitoring levels may be eligible for reduced monitoring.¹⁶

¹⁰ 30 Tex. Admin. Code § 290.271(a), (b); *see* 30 Tex. Admin. Code §§ 290.272, .273.

¹¹ 30 Tex. Admin. Code § 290.274(b).

¹² 30 Tex. Admin. Code § 290.274(c).

¹³ 30 Tex. Admin. Code § 290.117(c).

¹⁴ 30 Tex. Admin. Code § 290.117(b)(2)(A).

¹⁵ 30 Tex. Admin. Code § 290.117(b)(2)(B).

¹⁶ 30 Tex. Admin. Code § 290.117(b)(2).

PWSs shall conduct initial tap sampling until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring.¹⁷ A system that serves 50,000 or fewer people may be placed on reduced monitoring if the system meets the lead and copper action levels: (1) during two consecutive six-month periods, the system may then be placed on annual tap monitoring;¹⁸ and (2) during three consecutive years of monitoring, the frequency of monitoring may be reduced from annually to once every three years.¹⁹

Lead and copper tap sample results shall be reported within ten days following the end of each monitoring period. For systems on annual or less frequent schedules, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the ED has established an alternate monitoring period, the last day of that period.²⁰ The ED may invalidate a lead or copper tap sample if the ED determines that the sample was taken from an inappropriate site.²¹

The owner or operator of a PWS who fails to perform the required monitoring or reporting shall notify the system's customers of this failure no later than one year after the PWS learns of the failure.²² The notice shall be issued by mail or other direct

¹⁷ 30 Tex. Admin. Code § 290.117(c).

¹⁸ 30 Tex. Admin. Code § 290.117(c)(2)(B)(ii).

¹⁹ 30 Tex. Admin. Code § 290.117(c)(2)(C)(iii).

²⁰ 30 Tex. Admin. Code § 290.117(i)(1).

²¹ 30 Tex. Admin. Code § 290.117(h)(3)(B).

²² 30 Tex. Admin. Code § 290.122(c)(2).

delivery to each customer receiving a bill and to other service connections.²³ A copy of this notice must be submitted to the ED within ten days of its distribution as proof of public notification, and each proof of public notification must be accompanied by a signed Certificate of Delivery.²⁴

Monitoring Requirements for Microbial Contaminants. A PWS shall collect samples for total coliform, fecal coliform, and *E. coli*.²⁵ Within 24 hours of notification of the routine distribution total coliform-positive sample, the groundwater system must collect at least one raw groundwater source *E. coli* (or other approved fecal indicator) sample from each groundwater source in use at the time the distribution coliform-positive sample was collected.²⁶ However, the ED may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the raw groundwater source sample within 24 hours due to circumstances beyond its control. The PWS must then collect the sample within 48 hours.²⁷

Public Health Service (PHS) Fee. The Commission has established fees for services it provides to PWSs.²⁸ For services provided to community PWSs with

²³ 30 Tex. Admin. Code § 290.122(c)(2)(A).

²⁴ 30 Tex. Admin. Code § 290.122(f).

²⁵ 30 Tex. Admin. Code § 290.109(d).

²⁶ 30 Tex. Admin. Code § 290.109(d)(4)(B).

²⁷ 30 Tex. Admin. Code § 290.109(d)(4)(B)(i).

²⁸ 30 Tex. Admin. Code § 290.51(a)(1).

fewer than 25 connections, the PHS fee will be an amount up to a maximum of \$200 and are due by January 1 of each year.²⁹

Radionuclides Other Than Radon (Radium-226 and Radium-228). TCEQ promulgated rules on radionuclides that include requirements on contaminants and their monitoring.³⁰ The concentration of radionuclide contaminants in the water entering the distribution system shall not exceed the maximum contaminant levels (MCL) for naturally occurring radionuclides. For combined Radium-226 and Radium-228, as calculated by the summation of the results for Radium-226 and Radium-228, the MCL is 5 picoCuries per liter (pCi/L).³¹ The detection limits for Radium-226 is 1 pCi/L and for Radium-228 is 1 pCi/L.³²

A PWS shall measure the concentration of radionuclides at locations and frequencies specified in the system's monitoring plan, and all samples must be collected during normal operating conditions.³³ The results of samples collected during initial and routine monitoring periods are used to determine the monitoring frequency for subsequent monitoring periods.³⁴ If the result for any contaminant (Radium-226 or Radium-228) is at or above the detection limit but at or below one-

²⁹ 30 Tex. Admin. Code § 290.51(a)(3)(A), (a)(6); *see* Tex. Water Code § 5.701(a) (requiring fees due to the Commission be paid on the date the fee is due).

³⁰ 30 Tex. Admin. Code § 290.108.

³¹ 30 Tex. Admin. Code § 290.108(b)(1)(A).

³² 30 Tex. Admin. Code § 290.108(c)(1)(B)(i).

³³ 30 Tex. Admin. Code § 290.108(c).

³⁴ 30 Tex. Admin. Code § 290.108(c)(1)(B).

half the MCLs, the system must collect and analyze at least one sample at that sampling point every six years.³⁵

The owner or operator of a PWS must provide the ED with a copy of the results of any test, measurement, or analysis within the first ten days following the month in which the result is received by the PWS or the first ten days following the end of the required monitoring period.³⁶

B. ADMINISTRATIVE PENALTY

The Commission has the authority to assess an administrative penalty of up to \$5,000 per day, per violation, for violations of chapter 341 of the Texas Health and Safety Code, or related rules or orders.³⁷ In determining the amount of penalty, the Commission shall consider:

- (1) the nature of the circumstances and the extent, duration, and gravity of the prohibited acts or omissions;
- (2) with respect to the alleged violator:
 - (A) the history and extent of previous violations;
 - (B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

³⁵ 30 Tex. Admin. Code § 290.108(c)(1)(B)(ii).

³⁶ 30 Tex. Admin. Code § 290.108(e).

³⁷ Tex. Health & Safety Code § 341.049(a).

- (C) the person's demonstrated good faith, including actions taken by the person to correct the cause of the violation;
 - (D) any economic benefit gained through the violation; and
 - (E) the amount necessary to deter future violation; and
- (3) any other matters that justice requires.³⁸

C. BURDEN OF PROOF

The ED has the burden to prove the violations by a preponderance of the evidence. Respondent has the burden of providing all elements of any affirmative defense asserted. Any party submitting facts relevant to the penalty determination factors has the burden of proving those facts. The burden of proof is by a preponderance of the evidence.³⁹

III. EVIDENCE

The ED had 15 exhibits admitted.⁴⁰ The ED also presented the expert testimonies of Jacolyn Saldaña and Nicholas Lohret-Froio. Ms. Saldaña is a TCEQ Drinking Water Inventory and Protection Team Leader. She explained TCEQ's process for compliance investigations and testified about the compliance investigation conducted at Lil Countryside WSC's PWS from October 18, 2021,

³⁸ Tex. Health & Safety Code § 341.049(b). The Commission's Penalty Policy was developed for purposes of calculating an administrative penalty. ED Ex. 9.

³⁹ 30 Tex. Admin. Code § 80.17(b).

⁴⁰ ED Exhibits 1 through 15. ED Exhibits 14 and 15 are rebuttal exhibits. The ALJ took official notice of ED Reference Materials A through S. ED Reference Materials A through S includes the jurisdictional exhibits and administrative record admitted at the October 26, 2023 prehearing conference (ED-A through ED-D), relevant statutes (ED-E through ED-G, ED-P through ED-S), and rules (ED-H through ED-O).

through November 12, 2021, and six of seven alleged violations. Mr. Lohret-Froio is a TCEQ Enforcement Coordinator III and testified about the remaining violation and the calculation of administrative penalties using the TCEQ's 2021 Penalty Policy.

The ED seeks to impose penalties for seven violations.⁴¹ Since Respondent resolved six violations, the ED pursues corrective action only on the one outstanding violation— the failure to collect at least one raw groundwater source *E. coli*.

Ms. Lerich testified on behalf of Respondent. The exhibits Respondent intended to offer were already admitted in ED Exhibit 6.

OPIC offered no testimony or exhibits.

A. BACKGROUND

Respondent owns and operates a PWS located at 1735 County Road 2320 in Terrell, Hunt County, Texas (Facility).⁴² The Facility has a site classification of groundwater less than or equal to 50 connections.⁴³ Based on the Facility having one

⁴¹ ED Exs. 2 at 3-6; 8.

⁴² ED Ex. 8 at 172.

⁴³ ED Ex. 2 at 2.

groundwater well as its water source, having 15 service connections, and servicing 27 individuals,⁴⁴ Ms. Saldaña concluded that the Facility is a community PWS.

B. ALLEGED VIOLATIONS

1. Failure to submit DLQORs

Ms. Saldaña testified that a community PWS, like the Facility, is required to submit DLQORs each quarter,⁴⁵ but Respondent failed submit DLQORs for the fourth quarter of 2020, first quarter of 2021, and second quarter of 2021.⁴⁶

Ms. Lerich, however, testified that they were improperly trained on how to fill out the documents. Upon learning all their DLQORs were incorrect, Ms. Lerich continuously asked what she was doing wrong. Additionally, she requested and eventually received financial, managerial, and technical assistance training (FMT) from TCEQ.⁴⁷ Ms. Lerich asserted TCEQ kept giving her incorrect information. Twice she received FMT assignment for assistance with the DLQOR,⁴⁸ and she resubmitted the forms after each time. It was not until after submitting the DLQOR a third time and eventually receiving another FMT assignment that she finally submitted the DLQOR correctly. Ms. Lerich claimed DLQORs were late because

⁴⁴ ED Exs. 3 at 15-16; 8 at 174.

⁴⁵ 30 Tex. Admin. Code § 290.110(e)(4)(A).

⁴⁶ ED Ex. 2 at 3-4.

⁴⁷ ED Ex. 6 at 52.

⁴⁸ ED Ex. 6 at 59-60.

their submission occurred during the COVID-19 pandemic when “everyone was late.” Moreover, she tried to correct the DLQORs to the best of her ability within the timeframe given. Ms. Lerich admitted the DLQORs were not submitted correctly for a period of three years, and they were sent all at once on August 19, 2022, which was past the submission deadline.

2. Failure to properly mail or directly deliver one copy of the Consumer Confidence Report to customers

Ms. Saldaña testified that community PWSs are required to deliver the Consumer Confidence Report (CCR) to bill paying customers and certify to the ED that the CCR has been distributed.⁴⁹ TCEQ records for the Facility showed that the CCR for 2020 and the certificate of delivery were not provided.⁵⁰

Ms. Lerich disagreed. She claimed Respondent delivered the CCR to its customers by posting it in a public place and mailing a copy with the certificate of delivery to TCEQ in July 2020 and a second time in July 2022—both after July 1 deadline.⁵¹ Ms. Lerich said that the CCR certificate of delivery form to TCEQ included the options for Respondent on how to provide its customers a copy of the CCR form: post a copy of the CCR in a public area, distribute it by mail to customers, or go door to door and provide a copy of the CCR to the customers.⁵² Since they are

⁴⁹ 30 Tex. Admin. Code § 290.274.

⁵⁰ ED Ex. 2 at 4.

⁵¹ ED Ex. 6 at 66-70.

⁵² A copy of the certificate of delivery form was not included as part of the evidence.

a “closeknit system,” Respondent posted the CCR in a public area. Ms. Lerich added she also “sent it to customers.”

3. Failure to collect lead and copper tap samples at the required sample sites

Ms. Saldaña explained that the Facility qualified for a reduced monitoring level (a three-year monitoring period from 2014 to 2016) since its samples were below the reduced monitoring level threshold for copper and lead in 2013.⁵³ She said that the Facility then qualified for another three-year monitoring period beginning in 2017.⁵⁴ According to Ms. Saldaña, when TCEQ did not receive samples in 2017, it placed the Facility on annual monitoring, which began in 2020. She noted that no samples were received for the January 1, 2020, through December 31, 2020, monitoring period. Ms. Saldaña testified that sample sites for a lead and copper monitoring plan are safe to use after approval and any changes to sample sites have to be pre-approved. Here, samples were collected from approved sites but associated to the incorrect sample site on the chain of custody form and were invalidated.

Since Ms. Lerich’s testimony regarding this alleged violation overlapped with her testimony regarding the next violation, Respondent’s position will be discussed in the next section.

⁵³ The reduced monitoring level for lead is 0.005 mg/L and for copper is 0.65 mg/L. 30 Tex. Admin. Code § 290.117(b)(2).

⁵⁴ The Facility’s lead levels were at 0.000692 mg/L and copper levels at 0.529 mg/L. ED Ex. 4.

4. Failure to collect lead and copper tap samples and report the results to the ED

According to Ms. Saldaña, the Facility's triennial reduced monitoring period beginning in 2017 through 2019 ended on December 31, 2019, and Respondent had not taken any samples or submitted a signed certificate of delivery to the ED certifying that public notice was issued during the required timeframe.⁵⁵ Ms. Saldaña explained that the owner or operator of a PWS who *fails to perform monitoring* has to notify persons served by the system—no later than one year after the PWS learns of the failure—by mail or other direct delivery to each customer receiving a bill and to other service connections. Having failed to perform monitoring, Respondent was required to issue a public notice. Ms. Saldaña conceded that posting the public notice in a public area is a good faith secondary posting but asserted that community PWSs require direct notice to customers. Moreover, a copy of any public notice must be submitted to the ED within ten days of its distribution as proof of public notification and each proof of public notification must be accompanied with a signed certificate of delivery. According to Ms. Saldaña, TCEQ records showed that neither document was submitted for the January 1, 2017, through December 31, 2019, monitoring period.

Ms. Lerich emphasized that Respondent provided public notice and certificate of delivery for two failed lead and copper samples and did the required

⁵⁵ ED Exs. 2 at 5, 6; 4.

testing and followup.⁵⁶ Respondent took over the system in 2017 and TCEQ had accepted their monitoring plan in April 2018. Respondent submitted its first lead and copper samples in 2019 and then again on June 10, 2020. The June 2020 results were not accepted, but Ms. Lerich claimed no one at TCEQ could tell her why. Ms. Lerich was confused when Respondent received a letter from TCEQ informing it that one sample was collected at a site not approved by TCEQ because the list attached to the letter did not match Respondent's monitoring plan. Ms. Lerich did not understand how it was possible they used wrong sample sites when they were following their monitoring plan and had used five sites as required.

Ms. Lerich further explained that the lead and copper tap sample were associated to the incorrect sample sites because of an error she made on the chain of custody form (i.e., she did not have the form signed). The tap samples were denied the next time because of the sample size; Ms. Lerich admitted the sampling was done incorrectly. Ms. Lerich insisted TCEQ should have explained to her that the samples were from the incorrect sample sites.

5. Failure to collect required *E. coli* (or other approved fecal indicator) sample

The ED alleged that Respondent failed to collect required *E. coli* (or other approved fecal indicator) sample, within 24 hours of notification of the routine distribution total coliform-positive samples on April 20, 2021, at least one raw

⁵⁶ In her interrogatory response to the ED, Ms. Lerich explained that Respondent 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 because "the person that wrote it, wrote it wrong and it took TCEQ 2+ yrs to figure out why." ED Ex. 6 at 32.

groundwater source *E. 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. Ms. Saldaña testified that the total coliform sample results between April 1, 2021, and May 1, 2021, had indicated that the earliest results showing the presence for coliform occurred on April 20, 2021.⁵⁷ She noted Respondent received notification of the positive total coliform sample on April 21, 2021;⁵⁸ therefore, Respondent had 24 hours to obtain a raw ground sample. However, no samples were taken, and no evidence existed that Respondent requested an extension of the sample period.⁵⁹ She explained that if the ED had extended the time period, Respondent would have had 48 hours to take a raw sample, but, again, none was taken.

Ms. Lerich explained that Respondent does not have access to a lab. Respondent's samples are picked up on Tuesdays and Thursdays from a lab located an hour and a half away. After a failed bacteria testing in October 2019, the TCEQ granted Ms. Lerich's request for an extension to collect repeat samples.⁶⁰ Ms. Lerich believed this approval established that the 24-hour deadline did not apply to Respondent. Thus, when Respondent received notification on April 21, 2021, of a

⁵⁷ ED Ex. 5.

⁵⁸ ED Ex. 6 at 105.

⁵⁹ See ED Ex. 5.

⁶⁰ ED Ex. 6 at 106-07.

positive total coliform sample, she assumed the extension still applied. The followup sample was collected on April 27, 2021.⁶¹

6. Failure to pay annual PHS fees

The ED alleged that Respondent failed to pay annual PHS fees and/or any associated late fees for TCEQ Financial Administration Account No. 91160097 for Fiscal Years 2006 through 2021. Mr. Lohret-Froio explained that TCEQ is authorized to establish annual fees for PWSs, which is due on January 1 of each year.⁶² The payment of the fees is required when due.⁶³ When the overdue fees exceed \$100, Mr. Lohret-Froio said, it becomes a violation. According to the ED, Respondent owed \$2,418.26 as of November 29, 2021 for PHS fees.⁶⁴

TCEQ appointed a temporary manager for the Facility on June 30, 2016, for a term of 180-days.⁶⁵ In a letter to TCEQ dated April 5, 2023, Ms. Lerich stated they had made payments to TCEQ since December 2018, and before that, the acting manager collected the fees.⁶⁶ According to Ms. Lerich's notes, the payments made since 2018 were applied to Respondent's past due amounts.⁶⁷ Ms. Lerich insisted

⁶¹ ED Ex. 6 at 108-28.

⁶² 30 Tex. Admin. Code § 290.51(a)(3)(A), (6).

⁶³ Tex. Water Code § 5.702(a).

⁶⁴ ED Exs. 8 at 172; 11.

⁶⁵ ED Ex. 6 at 138.

⁶⁶ ED Ex. 6 at 137.

⁶⁷ ED Ex. 6 at 142.

they have always paid their fees in a timely manner. Moreover, their base rates included TCEQ fees in their members' billings.⁶⁸ Ms. Lerich could not understand how they would be liable for fees. She thought it was unfair that the fees were paid twice: first from the customers, then from Respondent.

7. Failure to report the results of radionuclides sampling

The ED alleged that Respondent failed to provide the results of radionuclides sampling to the ED for the January 1, 2013, through December 31, 2018, monitoring period. Ms. Saldaña testified that the radionuclide result (combined Radium-226 and Radium -228) of a sample taken on November 26, 2012, showed a concentration of 2.4 pCi/L,⁶⁹ which was less than the maximum concentration level of 5 pCi/L. Ms. Saldaña explained that the detection level is 1 pCi/L for Radium-226 and Radium -228, individually. If combined, the level is 2.4 pCi/L. A sample is collected every six years.⁷⁰ With the sample taken in 2012, the next sample, with the monitoring period ending on December 31, 2018, was due on January 1, 2013. According to Ms. Saldaña, Respondent did not collect or report samples to TCEQ.

Ms. Lerich believed radionuclides sampling were required every nine years and that Respondent could use historical data. She insisted the ED approved Respondent's use of historical data but admitted she could not find documentation of the approval. Ms. Lerich also believed Respondent complied with 30 Texas

⁶⁸ ED Ex. 6 at 133-44.

⁶⁹ ED Ex. 7.

⁷⁰ The six-year period for Respondent began January 1, 2013, and ended December 31, 2018. ED Ex. 2 at 3.

Administrative Code section 290.108(e) and did not believe subsection (a) of that rule applied to Respondent despite admitting that the Facility was a community PWS.

C. PENALTY AMOUNT

Mr. Lohret-Froio described TCEQ's Penalty Policy developed by TCEQ's Office of Compliance and Enforcement⁷¹ and explained how each component of the penalty was calculated based on (1) the base penalty amount;⁷² (2) the matrix used (Environmental, Property, and Human Health Matrix or the Programmatic Matrix); (3) any adjustments made based on the type of release (actual or potential) and the type of harm (major, moderate, or minor) caused by the violations when using the Environmental, Property, and Human Health Matrix; (4) the degree of noncompliance (major, moderate, or minor) when using the Programmatic Matrix; (5) the number of violations;⁷³ (6) good faith efforts to comply;⁷⁴ and (7)

⁷¹ ED Ex. 9.

⁷² For each violation except the failure to pay fees and failure to provide the results of the radionuclides sampling to the ED, Mr. Lohret-Froio testified that the base penalty begins at \$5,000, which is the maximum penalty amount allowed per violation. The violation for failing to provide the results of the radionuclides sampling to the ED has a base penalty starting at \$1,000.

⁷³ Mr. Lohret-Froio testified that this section of the penalty calculation worksheet helps to identify how long a violation occurred. For discrete events, a penalty event is still assessed for every documented observation. Mr. Lohret-Froio explained that all the alleged violations—except for the violation relating to submission of the DLQORs—were considered a single event and did not change the penalty amount.

⁷⁴ Mr. Lohret-Froio testified that reduction to the base penalty is appropriate if Respondent achieves compliance with the violation either (1) before there is an ED's Preliminary Report and Petition (EDPRP) or an initial settlement offer and the corrective action is completed after the issuance of a Notice of Violation (NOV) or Notice of Enforcement (NOE); or (2) as soon as the violations are identified and before the issuance of a NOV or NOE. Respondent did not receive a penalty reduction for good faith efforts to comply because it did not completely resolve the violations consistent with the TCEQ's Penalty Policy.

Respondent's delayed and avoided costs.⁷⁵ Mr. Lohret-Froio testified that he screened the case on November 29, 2021, applied the Penalty Policy consistently with other enforcement cases, and opined that a penalty of \$4,635 is appropriate considering the facts and circumstances of the alleged violations.

Before explaining the penalty calculation for six of the seven alleged violations, Mr. Lohret-Froio identified Respondent as a Minor Source because it had less than 1,100 total connections.

Alleged Violation 1. Mr. Lohret-Froio applied the Programmatic Penalty Matrix because this violation is a recordkeeping violation. The violation falls under the major category from a Minor Source because Respondent did not meet 100% of the requirement to submit the DLQORs to the ED. Accordingly, Mr. Lohret-Froio assessed 10% to the base penalty resulting in an adjusted base penalty of \$500. With three reports missing, it counted as three discrete single events resulting in a \$1,500 violation subtotal.⁷⁶

Alleged Violation 2. Mr. Lohret-Froio applied the Programmatic Penalty Matrix to this violation because it was a recordkeeping violation. The violation falls

⁷⁵ Mr. Lohret-Froio testified that any calculated Economic Benefit for each violation was not included in the penalty calculation because Respondent fell under the provision that non-profit organizations or a governmental authority are not subject to an economic benefit enhancement. ED Ex. 9 at 236. Accordingly, the ALJ does not discuss any finding of economic benefit of avoided or delayed costs in the Proposal for Decision.

⁷⁶ ED Ex. 12 at 245-46.

under the major category from a Minor Source, which applies a 10% assessment to the base penalty resulting in a \$500 penalty for one missing CCR.⁷⁷

Alleged Violation 3. Mr. Lohret-Froio applied the Programmatic Penalty Matrix to the alleged failure to collect lead and copper tap samples at the required sample sites because this was a management and recordkeeping violation. The violation falls under the minor category from a Minor Source because less than 30% of the rule requirement was not met. Thus, Mr. Lohret-Froio applied a 1% adjustment resulting in a \$50 penalty for missing samples for the January 1, 2020, through December 31, 2020, monitoring period.⁷⁸

Alleged Violation 4. Mr. Lohret-Froio applied the Environmental, Property and Human Health Matrix because Respondent failed to monitor lead and copper tap samples, which could lead to the possibility of a significant amount of these contaminants being released and exceeding the levels that are protective of human health. He characterized the release and harm as “Potential Major” from a Minor Source, which resulted in 15% adjustment for a \$750 penalty for missing samples for the January 1, 2017, through December 31, 2019, monitoring period.⁷⁹

Alleged Violation 5. Mr. Lohret-Froio applied the Environmental, Property and Human Health Matrix applies to this violation because Respondent failed to

⁷⁷ ED Ex. 12 at 247-48.

⁷⁸ ED Ex. 12 at 249-50.

⁷⁹ ED Ex. 12 at 251-52.

collect a groundwater source *E. coli* sample. Such failure had a potential for release with major harm from a Minor Source. He applied a 15% adjustment, which resulted in a \$750 penalty for failure to collect required *E. coli* sample in 2021.⁸⁰

Alleged Violation 6. Mr. Lohret-Froio testified that the ED does not seek any penalty for Respondent's failure to pay PHS fees.⁸¹

Mr. Lohret-Froio stated that the sum of these six alleged violations totaled \$3,550.⁸² The only adjustment applied related to Respondent's compliance history, which increased the total base penalty by 27% because Respondent had five NOVs with same or similar violations as those in this enforcement action and one other NOV with dissimilar violations.⁸³ This enhancement resulted in a payable penalty amount of \$4,508.⁸⁴

Alleged Violation 7. Mr. Lohret-Froio explained that Respondent's failure to provide the results of radionuclides sampling to the ED for the 2013 through 2018 monitoring period is a recordkeeping violation assessed under the Programmatic Penalty Matrix with the degree of noncompliance characterized as major because 100% of the rule requirement was not met. He applied a 10% adjustment to the \$1,000

⁸⁰ ED Ex. 12 at 253-54.

⁸¹ ED Ex. 12 at 255-56.

⁸² \$1,500 + \$500 + \$50 + \$750 + \$750 + \$0 = \$3,550.

⁸³ ED Ex. 12 at 244.

⁸⁴ ED Ex. 12 at 243.

base penalty,⁸⁵ which resulted in a \$100 base penalty. Added to that amount was a 27% adjustment for Respondent's compliance history. The violation resulted in a total assessed penalty of \$127.⁸⁶

Ms. Lerich did not address each assessed penalty individually. Rather, she mentioned Respondent's inability to pay the penalty. Ms. Lerich asserted that Respondent has no money—just a \$672.76 bank balance.⁸⁷

D. RECOMMENDED CORRECTIVE ACTIONS

Ms. Saldaña and Mr. Lohret-Froio recommended corrective action on only one violation because Respondent had resolved all but that issue: collecting the raw groundwater source of *E. Coli* sample. They recommended Respondent complete two tasks: (1) collect one groundwater source *E. Coli* sample from the groundwater source in use at the time coliform-positive samples were collected and (2) submit written certification to the ED to demonstrate compliance.

⁸⁵ Mr. Lohret-Froio reiterated that the base penalty for this violation is \$1,000. He did not testify to any adjustments to the penalty calculation. However, the ED argued in closing that Texas Health and Safety Code section 341.049 was amended in 2019 to increase the maximum penalty from \$1,000 to \$5,000. This violation occurred at the end of 2018 and TCEQ calculated the penalty in 2019. *See* Tex. Health & Safety Code § 341.049 (stating that “[t]he penalty shall not be less than \$50 and not more than \$5,000 for each violation”); ED Ex. 9 at 221 (stating that for PWSs, “[v]iolations occurring before September 1, 2019, are subject to a penalty of not less than \$50 and not more than \$1,000 for each violation.”).

⁸⁶ ED Ex. 13.

⁸⁷ In her response to the ED's Interrogatory No. 22, Ms. Lerich noted Respondent has \$1,700 in the bank and cannot borrow money because Respondent cannot pay it back. ED Ex. 6 at 36.

E. TESTIMONY OF MS. LERICH

Ms. Lerich testified that TCEQ had visited their small community and informed them they had to drill a personal well or form a Water Supply Corporation (WSC). The community chose to establish a WSC (i.e., Lil Countryside WSC) because many people could not afford a well. The Public Utility Commission of Texas issued Respondent's certificate of convenience and necessity in November 2017.⁸⁸ Ms. Lerich had volunteered to run the PWS and was elected the president of Lil Countryside WSC. Ms. Lerich insisted she did her best despite not having experience in PWSs. Although she took the training on running a PWS, Ms. Lerich—at her core—was merely a housekeeper who had taken on the responsibilities of the PWS. She admitted to not knowing the rules or being an expert in the industry. Nevertheless, Ms. Lerich argued that they thought they were running the PWS correctly since they followed TCEQ's training and directives.

During the COVID-19 pandemic in 2020, Respondent's officers left their positions, except for Ms. Lerich and the treasurer. In seven years, no one stepped up to relieve Ms. Lerich of her initial three-year term. Now, Ms. Lerich and the treasurer are resigning from their positions.⁸⁹

Ms. Lerich mentioned how, during the COVID-19 pandemic, a shutdown of communication occurred everywhere particularly from TCEQ. When TCEQ started

⁸⁸ ED Ex. 6 at 169.

⁸⁹ Ms. Lerich noted she already submitted her resignation, was selling her home, and—due to her health—has been living with her daughter.

requesting documentation from Respondent, Ms. Lerich said no one at TCEQ could answer her questions. Eventually, Ms. Lerich said she “got sassy” and “onery and cocky” with TCEQ because she could not conduct her business when she had to “keep sending TCEQ things.” It was not until she learned about the alleged violations that she realized she did not receive proper instructions from TCEQ and the vendors who trained them. Not only did TCEQ provide inadequate training, but Ms. Lerich asserts TCEQ failed to communicate with her and with the TCEQ staff Ms. Lerich had reached out to.

Ms. Lerich concluded that Respondent wanted to comply and had complied with the law to the best of its abilities. Respondent is made up of people who know nothing about PWSs, but they did everything TCEQ asked of them. They repeatedly resent information to TCEQ. Had they known about their errors sooner, they would have corrected them earlier. Still, they had done what was required of them as quickly as possible. Ms. Lerich also insisted that she expects help to be given when asked, but TCEQ stopped providing help at the end of 2020. She felt TCEQ had forgotten about them because, unlike before the pandemic when she would receive a call-back within 24 hours, she could no longer get a hold of a person.

Ms. Lerich argued that she wished TCEQ extended more consideration towards Respondent due to its size. She tried to keep Respondent from incurring a fine because Respondent does not have the ability to pay it. Eventually, Mr. Lerich said she started to “shut down.” Mr. Lerich, nonetheless, takes responsibility for her actions.

IV. ANALYSIS

A. ALLEGED VIOLATIONS

Respondent's primary argument for each alleged violation was TCEQ's failure to provide proper training on how to run a WSC and PWS, failure to communicate, and failure to maintain records (e.g., TCEQ did not have copies of the documents Ms. Lerich had sent). Although compelling, the record lacks evidence to support these contentions. The ALJ does find Ms. Lerich's testimony credible that she was not an expert in PWSs and had done her best to meet all TCEQ requirements. The ALJ also commends Ms. Lerich for the effort she put into her position for the benefit of her community as well as her mettle during her tenure as president. However, there was insufficient evidence presented to substantiate Respondent's arguments.

First, Respondent made some admissions. Ms. Lerich admitted to: submitting the DLQORs past the deadline (Violation 1); making an error in the chain of custody form for the lead and copper tap samples as well as incorrectly performing the sampling (Violation 3); and only posting in a public place public notification of failure to collect the lead and copper tap samples when the rule required notice to be issued by mail or other direct delivery to each customer (Violation 4). Second, inconsistencies existed in Respondent's documents and/or Ms. Lerich's testimony. For example, Respondent included a copy of the 2020 CCR, which included Ms. Lerich's handwritten note that the 2020 CCR was mailed with a certificate of delivery to TCEQ on July 6, 2022, but the receipt from the United States Postal

Service—that purportedly showed the CCR was mailed to TCEQ—only indicated payment for the delivery of a package to Austin and was dated May 24, 2022 (Violation 2). Third, insufficient evidence existed that a signed certificate of delivery was sent to the ED, reports were submitted, or fees paid (e.g., lacking documentation showing the allocation of monies towards unpaid fees).

Finally, Respondent made incorrect assumptions. Respondent believed a 2018 extension of the 24-hour deadline to obtain a raw ground sample applied in future total coliform-positive samples (Violation 5) and that Respondent had a nine-year sampling period for radionuclide testing and could use of historical data (Violation 7). Regarding the former, the rules provides that extension of the 24-hour deadline is granted on a *case-by-case basis*;⁹⁰ therefore, a request for extension must be submitted for each occurrence. Regarding the latter, there was no proof the ED approved Respondent’s use of historical data in radionuclide samplings or that a nine-year reporting applied because Respondent’s combined Radium-226 and Radium-228 sampling met the requirements for a six-year sampling period.⁹¹

The record establishes that Respondent is a community PWS, and the ALJ finds that the ED established by a preponderance of the evidence that Respondent committed all seven violations.

⁹⁰ 30 Tex. Admin. Code § 290.109(d)(4)(B)(i) (emphasis added).

⁹¹ See 30 Tex. Admin. Code § 290.108(c)(1)(B)(ii).

B. PROPOSED PENALTY

TCEQ must consider certain statutory facts that are further explained in its 2021 Penalty Policy.⁹² The administrative penalty recommended by the ED for the seven violations, which includes \$0 for the failure to pay fees, totaled \$4,635. This amount included a 27% adjustment because of Respondent's five prior NOVs with same or similar violations as those in this enforcement action and one other NOV with dissimilar violations.

The ED argued that the base penalty for the violation of radionuclides sampling for the 2013 through 2018 monitoring period should have been \$5,000 instead of the \$1,000 testified by Mr. Lohret-Froio. The ED noted that: (1) the 2019 amendment to section 341.049 of the Texas Health and Safety Code raised the maximum penalty amount; (2) the violation occurred at the end of 2018; and (3) TCEQ calculated the penalty in 2019. However, section 341.049 states that "[t]he penalty shall not be less than \$50 and not more than \$5,000 for each violation." Moreover, Mr. Lohret-Froio had explained how that penalty was calculated using the Penalty Calculation Worksheet,⁹³ a spreadsheet used to assess penalties in accordance with the TCEQ's Penalty Policy. Since the penalty is within the range noted in section 341.049 and the ED's witness attested to the fair calculation and consistent application of the penalty policy considering the facts and circumstances

⁹² Tex. Health & Safety Code § 341.049; ED Ex. 9.

⁹³ ED Exs. 12, 13.

related to each violation, the ALJ finds the \$1,000 base penalty used to assess a \$127 penalty for the violation of radionuclides sampling is appropriate.

Based on the evidence, the ALJ concludes that the ED's proposed penalty of \$4,635 is appropriately calculated under the 2021 Penalty Policy.

C. CORRECTIVE ACTION

The ED also seeks corrective action on the violation relating to the raw groundwater *E. coli* sample and recommends Respondent (1) collect, within 30 days after the effective date of the Commission Order, one groundwater source *E. coli* sample from the groundwater source in use at the time the distribution coliform-positive samples were collected and (2) submit written certification of compliance to the Commission within 45 days after the effective date of the Commission Order. The ALJ finds the corrective action is appropriate and necessary to address the outstanding violation.

D. INABILITY TO PAY

Under the TCEQ's rules, the party who asserts it cannot pay a proposed penalty amount has the burden to establish that its financial circumstances justify a lesser penalty amount.⁹⁴ Although Ms. Lerich testified Respondent could not afford to take a loan to pay the penalty and said that Respondent has only \$672.76 in the bank, Respondent provided no documentary proof to support its claim of financial

⁹⁴ 30 Tex. Admin. Code § 70.8(a).

inability to pay (e.g., federal income tax returns, income statements, balance sheets, cash flow statements, bank statements). The ALJ finds that Respondent has not met its burden to show that its financial circumstances justify a lesser penalty amount.

V. RECOMMENDATION

The ALJ recommends that the Commission adopt the attached proposed order assessing Respondent a total of \$4,635 in penalties for the violations proven in this case and requiring Respondent to take the corrective action necessary to correct the violation of failing to collect a groundwater source *E. coli* sample.

Signed June 11, 2024

ALJ Signature:



Dee Marlo Chico

Presiding Administrative Law Judge



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER AN ORDER ASSESSING ADMINISTRATIVE PENALTIES AGAINST 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 administrative penalties against 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 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 site 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 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 Order providing 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) 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 100% of the requirement to submit the DLQORs to the ED;
 - c. reduced the \$5,000 based penalty base penalty by 10%, as a result of the major/Minor Source characterization of the violation resulting in an adjusted base penalty of \$500;
 - d. is a violation 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 100% of the requirement to deliver one copy of the CCR to customers;
 - c. reduced the \$5,000 based penalty base penalty by 10%, 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 by 1%, as a result of the minor/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 by 15%, 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 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 by 15%, 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 by 10%, as a result of the major/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 is a PWS. 30 Tex. Admin. Code § 290.38(73).
7. Respondent 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 s290.122(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 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. 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, Financial 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 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