

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

August 11, 2023

Megan Grace

VIA EFILE TEXAS

Eli Martinez

VIA EFILE TEXAS

Mark Hughes
Ranch Hand Apartments, LLC
P.O. Box 1041
Canyon, TX 79015

VIA REGULAR MAIL & EFILE TEXAS

RE: Docket No. 582-23-05477.TCEQ; Texas Commission on Environmental Quality Docket No. 2022-0063-PWS-E; The Executive Director of the Texas Commission on Environmental Quality v. Ranch Hand Apartments, LLC

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.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,
PETITIONER**

v.

**RANCH HAND APARTMENTS, LLC,
RESPONDENT**

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that Ranch Hand Apartments, LLC (Respondent), violated the Texas Health and Safety Code and Commission rules pertaining to a public water system (PWS) and recommends the Commission enter an order assessing an administrative penalty and requiring corrective action to resolve the violations. The Administrative Law Judge (ALJ) finds that the ED proved the alleged violations by a preponderance of the evidence and recommends that

Respondent be required to pay an administrative penalty of \$43,750 and complete the recommended corrective actions to resolve the violations.

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 took place on May 3 and 8, 2023, before ALJ Susan Rodriguez of the State Office of Administrative Hearings. The ED was represented by Attorney Megan Grace, and the Commission's Office of Public Interest Counsel (OPIC) was represented by Attorney Eli Martinez. Respondent appeared and was represented by owner Mark Hughes. The record closed on June 19, 2023, after the parties had an opportunity file written closing arguments.

II. BACKGROUND FACTS AND ALLEGED VIOLATIONS

The factual background and alleged violations in this case are generally uncontroverted. Respondent is a limited liability company (LLC) formed by Mr. Hughes that owns and operates a PWS located at US Highway 60 near Canyon, Randall County, Texas (Facility).¹ The Facility consists of several apartment buildings on adjacent plots of land, each with its own corresponding well. The Facility is properly classified as a PWS because the plot of land underneath each building is owned by a different series LLC within the parent LLC of Ranch Hand

¹ Exs. ED-3 at 13; ED-16 at 104.

Apartments, LLC, and the Facility has at least fifteen total service connections or serves at least twenty-five people per day for at least sixty days per year.²

TCEQ conducted an investigation of the Facility from September 30, 2015, through October 14, 2015, regarding allegations that Respondent failed to submit plans and specifications to TCEQ for review and approval prior to constructing a new PWS.³ Following that investigation, Respondent signed an Agreed Order dated June 15, 2016 (2016 Agreed Order), agreeing to submit plans and specifications for review and approval within a certain time frame.⁴

In November 2018, TCEQ investigators conducted a follow-up investigation at the Facility to ascertain Respondent's compliance with the 2016 Agreed Order. During that site visit, investigators observed additional violations related to the PWS including that Respondent failed to provide proper storage capacity, failed to provide service pumps, and still had not submitted plans and specifications for review and approval. These violations were the subject of a second agreed order signed by Respondent that became effective on March 4, 2020 (2020 Agreed Order).⁵ Pursuant to the 2020 Agreed Order, Respondent paid a penalty of \$1,550 and agreed to, within 180 days, install total storage capacity of 200 gallons per connection,

² 30 Tex. Admin. Code § 290.38(71).

³ Ex. ED-2 at 27.

⁴ Ex. ED-5 at 26-31. The 2016 Agreed Order addressed TCEQ Docket No. 2015-1854-PWS-E.

⁵ Ex. ED-4. The 2020 Agreed Order addressed TCEQ Docket No. 2019-0303-PWS-E.

provide two or more service pumps having a total capacity of 2.0 gallons per minute (GPM) per connection, and submit plans and specifications for review.⁶

Following the entry of the 2020 Agreed Order, Enforcement Division order tracker Andrea Linson was assigned to monitor Respondent's compliance with the 2020 Agreed Order. On March 17, 2020, Ms. Linson emailed Respondent a signed copy of the order and information on the deadlines for completion of the corrective actions.⁷ Respondent failed to submit sufficient compliance documentation to TCEQ, and in April 2021 and July 2021, Ms. Linson sent Respondent notice of non-compliance.⁸ In October 2021, Respondent requested a one-year extension of time to comply with the 2020 Agreed Order based on "lack of service fulfillment" by Southwest Engineers, the engineering firm Respondent had hired to help bring the PWS into compliance. Respondent's request was denied.⁹

Based on Respondent's ongoing non-compliance with the 2020 Agreed Order, TCEQ investigators conducted another investigation at the Facility in November 2021 and determined that Respondent violated the following laws, rules, and ordering provisions of the 2020 Agreed Order:

⁶ Ex. ED-4 at 20-24. The 2020 Order also required Respondent to obtain approval of the as-built plans and specifications submitted within 270 days of the effective date.

⁷ Ex. ED-12.

⁸ Exs. ED-13, ED-14.

⁹ Ex. ED-17.

1. Texas Health and Safety Code section 341.0315(c); 30 Texas Administrative Code section 290.45(b)(1)(C)(ii); and Ordering Provision No. 2.c.i by failing to provide total storage capacity of 200 gallons per connection.
2. Texas Health and Safety Code section 341.0315(c); 30 Texas Administrative Code section 290.45(b)(1)(C)(iii); and Ordering Provision No. 2.c.ii by failing to provide two or more service pumps having a total capacity of 2.0 GPM per connection at each pump station or pressure plane.
3. Texas Health and Safety Code section 341.0315(a); 30 Texas Administrative Code section 290.39(e)(1) and (h)(1); and Ordering Provision Nos. 2.c.iii and 2.e by failing to submit plans and specifications to the ED for review and approval prior to the construction of a new PWS.

III. APPLICABLE LAW

Texas Health and Safety Code chapter 341 prescribes the duties of the Commission relating to the regulation and control of public drinking water systems in the state. A PWS is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances that has at least fifteen service connections or serves at least twenty-five individuals at least sixty days out of the year.¹⁰ Two or more systems that each have the potential to serve less than fifteen connections or less than twenty-five individuals but that are owned by the same person, firm, or corporation and located on adjacent land will be considered a PWS when the total potential service connections in the combined systems are

¹⁰ 30 Tex. Admin. Code § 290.38(71).

fifteen or greater or if the total number of individuals served by the combined systems total twenty-five or greater at least sixty days out of the year.¹¹

Texas Health and Safety Code section 341.0315(c) provides that each public drinking water supply system shall provide an adequate and safe drinking water supply. A person may not begin construction on a new PWS, or make modifications to an existing PWS, before submitting plans and specifications and, if required, a business plan, to the ED for review and approval.¹²

The Commission's rules and regulations establish the minimum water system capacity requirements for a PWS.¹³ Relevant to this case, a system with fifty to 250 connections must have a total storage capacity of 200 gallons per connection, as well as two or more pumps having a capacity of 2.0 GPM per connection at each pump station or pressure plane.¹⁴

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 rules or orders adopted thereunder.¹⁵ In determining the amount of the penalty, the Commission is required to consider:

¹¹ 30 Tex. Admin. Code § 290.38(71).

¹² Tex. Health & Safety Code § 341.035(a); 30 Tex. Admin. Code § 290.39(e)(1), (h)(1).

¹³ 30 Tex. Admin. Code § 290.45.

¹⁴ 30 Tex. Admin. Code § 290.45(b)(1)(C)(ii), (iii).

¹⁵ Tex. Health & Safety Code § 341.049(a).

- (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;
 - (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.¹⁶

The ED has the burden of proving the violations alleged, and the appropriateness of any technical ordering provisions, by a preponderance of the evidence.¹⁷ Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted.¹⁸ Any party submitting facts relevant to the penalty calculation has the burden of proving those facts by a preponderance of the evidence.¹⁹

¹⁶ Tex. Health & Safety Code § 341.049(b).

¹⁷ 30 Tex. Admin. Code § 80.17(b).

¹⁸ 30 Tex. Admin. Code § 80.17(b).

¹⁹ 30 Tex. Admin. Code § 80.17(b).

IV. EVIDENCE

The ED presented the testimony of Lindell Kottke, the TCEQ Environmental Investigator who conducted two investigations of the Facility and cited the alleged violations in this case; and Miles Wehner, the TCEQ Enforcement Coordinator who reviewed the sufficiency of the alleged violations and calculated the proposed administrative penalty. Mr. Hughes testified on behalf of Respondent. Finally, the ED offered eighteen exhibits that were admitted into evidence.²⁰ Respondent offered no exhibits. OPIC offered no testimony or exhibits.

A. TESTIMONY OF LINDELL KOTTKE

Mr. Kottke has been employed as a TCEQ environmental investigator since 2018. He conducts on-site investigations, writes investigative reports, and trains new employees to conduct TCEQ investigations, among other things.²¹ Mr. Kottke testified about TCEQ investigative processes in general and as applied to Respondent, and about the findings of his investigations at the Facility.

Mr. Kottke testified that Respondent's system qualifies as a PWS because it has eighty-seven connections and serves eighty-seven to 120 people at least sixty days per year. Mr. Kottke first investigated the Facility in 2018, which resulted in the 2020 Agreed Order. He conducted a second investigation in November 2021 and

²⁰ Exhibits ED-1 through ED-18. Exhibits ED-A through ED-D were admitted in SOAH Order No. 2 for jurisdictional purposes. The ED also provided Exhibits ED-E through ED-M which include reference materials that were not offered or admitted. With its closing brief, Staff submitted Exhibits ED-19 and ED-20 and requested that they be admitted into the record. Those exhibits were not timely filed or exchanged and are not admitted or considered in this matter.

²¹ Ex. ED-1.

wrote an investigative report detailing his findings.²² Megan Sandefer, another TCEQ investigator, and Ruben Arias, Respondent's water operator, were present during the 2018 investigation.²³ During that investigation, Mr. Kottke and Ms. Sandefer identified violations at the Facility that resulted in this enforcement action.

Mr. Kottke testified that during the November 2021 site visit, he observed that the Facility was still deficient with respect to storage capacity and service pumps. The Facility, he said, is required to have 17,400 gallons of storage capacity for its eighty-seven connections but had no storage capacity.²⁴ Having adequate storage capacity is essential, Mr. Kottke said, because if the water system goes down with no storage on hand, the residents would be unable to bathe, wash their hands, or cook.

During the site visit Mr. Kottke also observed that the Facility lacks service pumps. Based on its size, he said, the Facility is required to have two or more service pumps with total capacity of 2.0 GPM at each pump station or pressure plane. The pumps work in connection with the ground storage to provide pressure and move water through the system. During the investigation he discovered that the Facility has no service pumps and is 100% deficient in this regard.

²² Ex. ED-2.

²³ Ex. ED-2 at 5.

²⁴ Ex. ED-2 at 7.

Finally, Mr. Kottke testified that Respondent had not obtained or submitted plans or specifications for approval. Plans and specifications are important, he said, to ensure that the PWS will be constructed using safe, proper equipment and to avoid construction of a PWS that cannot provide a safe water supply. Because the Facility was constructed without pre-approval of plans or specifications, Mr. Kottke testified, as-built plans and specifications must be submitted for review and approval. He explained that Mr. Hughes asked for the names of engineering firms that could help and Mr. Kottke informed him of several but was unable to make a specific recommendation. He also testified that there are publicly available search tools that can be used to find licensed engineers.

Mr. Kottke explained that after his investigation and report were completed, he referred it for enforcement and further action. Mr. Kottke did not recall receiving a request from Mr. Hughes for an extension of time in October 2021. He said that he would not have handled such a request not only because it is not one of his job responsibilities, but because by that time the case would have been transferred to TCEQ's Enforcement Division and the request would have been reviewed by the person handling the Notice of Enforcement.

B. TESTIMONY OF MILES WEHNER

Mr. Wehner has been employed with the Commission for approximately four years as an Enforcement Coordinator. Among other things, Mr. Wehner prepares proposed orders that address violations discovered at water systems, and he was the Enforcement Coordinator assigned to this enforcement action. Mr. Wehner

provided testimony explaining how he calculated the proposed penalty in this matter using the Penalty Calculation Worksheet,²⁵ a spreadsheet used to assess penalties in accordance with TCEQ's Penalty Policy.²⁶

Mr. Wehner explained how he calculated the following for each of the three alleged violations: (1) the base penalty amount; (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 violation when using the Environmental, Property, and Human Health Matrix; (5) the number of violation events; (6) Respondent's good faith efforts to comply; (7) Respondent's delayed and avoided costs; and (8) the compliance history adjustment.

According to Mr. Wehner, the penalty calculation for each violation begins with the statutory base penalty of \$5,000, which can then be adjusted depending on certain factors unique to each violation. The proposed penalties for Violations 1 and 2 were calculated similarly as described below using the Penalty Policy.²⁷ Mr. Wehner noted that the Facility has fewer than 1,100 connections so it is considered a minor source. The Penalty Policy provides for a lower overall penalty for minor sources relative to major sources.

²⁵ Ex. ED-10.

²⁶ Ex. ED-9, effective January 28, 2021.

²⁷ Ex. Ed-10 at 78-81.

Mr. Wehner evaluated Violations 1 and 2 using the Environmental, Property, and Human Health Matrix because those violations did not involve just paperwork or recordkeeping issues. Mr. Wehner deemed the release as potential because there was no evidence of actual release of contaminants from the PWS. He classified the potential harm for Violations 1 and 2 as major because a release could expose people to contaminants exceeding levels protective of human health.²⁸

As a result of this characterization of the violations (potential release with major harm involving a minor facility), Mr. Wehner used the Penalty Policy to determine that the base penalty of \$5,000 should be adjusted downward to 15% of the base penalty, or \$750.²⁹ Mr. Wehner then calculated that there were twenty-three violation events because when he calculated the penalties, twenty-three months had passed since the effective date of the 2020 Agreed Order. This brought the violation base penalty to \$17,250 for each violation.

Next, Mr. Wehner considered whether the base penalty should be reduced because of Respondent's good faith efforts to comply. In determining if a Good Faith Efforts to Comply reduction should apply for a particular violation, he said, the Commission considers things such as the quality and timeliness of the actions taken to correct the violation. The sooner a violation is addressed and resolved, the larger the reduction in the penalty. According to Mr. Wehner, TCEQ does not award a reduction for good faith efforts to comply unless the violation is completely resolved,

²⁸ Ex ED-9 at 62-63.

²⁹ Ex. ED-9 at 65.

and it is ultimately the responsibility of the PWS owner to make sure the corrective actions are completed on time. Mr. Wehner did not award Respondent a reduction for good faith efforts to comply for either Violation 1 or 2 because, as of the date of the hearing, Respondent had not taken meaningful steps to resolve either violation and remained out of compliance.

Mr. Wehner then used the Economic Benefit Worksheet to calculate Respondent's delayed and avoided costs.³⁰ Mr. Wehner said that Respondent has realized delayed costs for Violations 1 and 2 because he has not yet had to pay to correct the violations. He calculated the delayed costs to be \$8,710 for Violation 1 and \$1,164 for Violation 2. He explained that the Penalty Policy provides that the total economic benefit per violation must exceed \$15,000 for any adjustment to be made; therefore, Respondent's delayed costs had no impact on the calculation. Following these calculations, Mr. Wehner assessed penalties of \$17,250 each for Violation 1 and Violation 2, for a combined violation base penalty of \$34,500.

For Violation 3, failure to submit plans and specifications for review and approval, Mr. Wehner chose the Programmatic Matrix because this is a paperwork violation. He categorized the degree of non-compliance as major because Respondent remained out of compliance with 100% of the rule requirements so the violation base penalty was adjusted downward to 10% of the original base penalty, or \$500. As with Violations 1 and 2, Mr. Wehner did not apply a good faith effort to

³⁰ Ex. ED-10 at 79, 81.

comply reduction because Violation 3 remains unresolved. He calculated an avoided cost of \$832, which had no impact on this penalty calculation.

The total base penalty calculated for all three violations is \$35,000.³¹ Mr. Wehner testified that, pursuant to the Penalty Policy, the penalty was subject to an additional 25% enhancement because of Respondent's compliance history, which includes one prior agreed final enforcement order without a denial of liability. Thus, the ED recommended a total assessed penalty of \$43,750.

C. TESTIMONY OF MARK HUGHES

Mr. Hughes testified that he built the Facility and set it up so it would not be considered a PWS. He began by building one unit of eight apartments with a water well and septic system on its own property. When the business began to grow and he built additional units, he contacted a lawyer who told him to set up the series LLCs. Now there are four buildings, each on its own property, and each with a well and a septic system. Mr. Hughes formed Ranch Hand Apartments, LLC, and the plot of land underneath each building is owned by a different series LLC within that parent LLC. Each building has its own bank account and insurance policy so that each building is legally separate from the others. He said that he did not want to be considered a PWS because it did not make sense financially and he could not justify the expense.

³¹ Ex. ED-10 at 76.

Mr. Hughes said he first became aware of the violations in 2016-2017 when someone from TCEQ informed him that his system was a PWS. He testified that within two weeks he traveled to Austin to meet with TCEQ to find out how to become compliant. TCEQ advised him to hire an engineer, he said, so he hired Southwest Engineers for approximately \$50,000. According to Mr. Hughes, it was two years before Southwest Engineers even visited the Facility, and he would go months without hearing from anyone. Southwest Engineers did provide some documentation to TCEQ, but the job he hired them to do was never completed.

In addition to hiring Southwest Engineers, Mr. Hughes said he has also made good faith attempts to comply by hiring a consulting firm at a cost of \$10,000. He has also spoken with GDI Engineering and OJD Engineering, hired Park Hill Engineering, hired a water operator, and met with the City of Canyon several times. He said he recently hired a company called Trident that has its own engineering company and works on existing systems.³² Mr. Hughes reiterated that he wants the system to be legal and that he wants to provide safe drinking water for his tenants. He has spent about \$8 million on the apartments and \$65,000 on compliance, but he expects it to cost another \$300,000 to \$400,000 to make the system compliant. Mr. Hughes said he has considered installing the storage capacity himself and then hiring an engineer later to do as-built plans.

³² The timing of Mr. Hughes's contacts with these companies is not clear from the evidence, but in October 2021 Mr. Hughes asked TCEQ for an extension of time to complete the 2020 Agreed Order terms so that he could hire a new engineering firm, and he remained in contact with Southwest Engineers until at least July 18, 2021. Exs. ED-15, ED-16 at 122-23. He also informed TCEQ that he made a request for a storage plan to Trident Pump Service in April 2022 and to OJD Engineering in November 2022. Ex. ED-16 at 108.

Mr. Hughes testified that Respondent does not have cash on hand to pay the proposed \$43,750 penalty at this time and he would take a loan out to cover the expense. He said that he would pay the loan back through the profits of the apartments, but would not raise his tenants' rent to offset the cost. He asked for more time to comply with the requirements and said that the administrative penalty should be eliminated because of the good faith efforts he described.

V. ALJ'S ANALYSIS

A. ALLEGED VIOLATIONS

1. Failure to provide storage capacity.

The PWS has eighty-seven connections and is, therefore, required to provide 17,400 gallons of storage capacity. The evidence is undisputed that Respondent's PWS has no storage capacity and is 100% deficient in this regard. The ALJ finds that the ED met its burden of showing that Respondent violated the Commission's rule requiring the system to have 200 gallons of storage capacity per connection.

2. Failure to provide service pumps.

The evidence is also undisputed that Respondent's PWS has no service pumps. Based on the size of the system, Respondent's PWS is required to have two or more service pumps with a total capacity of 2.0 GPM at each pump station or pressure plane. Investigators determined that Respondent's PWS has no service pumps, indicating a 100% deficiency. The ALJ finds that the ED has met its burden

of showing that Respondent violated the Commission's rule requiring adequate service pumps.

3. Failure to submit plans and specifications for review and approval.

There is no dispute that Respondent has failed to submit plans or specifications for review and approval for the PWS. Respondent did not obtain approval of plans or specifications prior to constructing the PWS and has not obtained as-built plans or specifications to have reviewed or approved since becoming aware of this requirement. The ED, therefore, has met its burden of proving this violation.

B. PROPOSED PENALTY

The ALJ finds that the ED met the burden of proving that the recommended penalty was assessed in compliance with applicable law and the Commission's Penalty Policy for all three violations. Mr. Hughes argued that the penalty should be reduced by an unspecified amount, or eliminated altogether, because of his good faith efforts to comply. The ALJ finds that the evidence does not establish that Respondent has engaged in good faith efforts to comply, and that no penalty reduction should be applied.

Mr. Hughes has known about violations at the Facility since 2016, when he was cited for failing to submit plans and specifications for review and approval. Since then, however, he has not corrected the violations. Mr. Hughes hired Southwest Engineers after the entry of the 2016 Agreed Order, but after two years he still had

no plans or specifications and was out of compliance with the order. TCEQ initiated another investigation, leading to a second enforcement order.

Following the entry of the 2020 Agreed Order, which imposed additional requirements to add storage capacity and service pumps, Mr. Hughes still demonstrated no sense of urgency about bringing the system into compliance. There is no evidence in the record that Mr. Hughes communicated with Southwest Engineers about the 2020 Agreed Order corrective actions between the order's effective date and July 2021. When TCEQ staff requested compliance documentation in July 2021, Mr. Hughes responded by saying that he was going to let TCEQ and his water operator "work this out together," and to let him know if they needed anything from him.³³ The record, therefore, does not establish that Respondent made any effort to address the order, or perform the corrective actions required, from March 4, 2020, until October 2021 when Mr. Hughes requested an extension of time so he could hire a different engineering firm. Despite his plea for more time though, Mr. Hughes did not make a request to another engineering firm for a storage plan until April 2022.³⁴

Respondent bears the burden of proving that an adjustment to the penalty calculation should be made for good faith efforts to comply. Taken on the whole, the evidence presented demonstrates a general lack of serious effort to correct the violations. To date, Respondent has not obtained plans or specifications, the system

³³ Ex. ED-14 at 97.


³⁴ Ex. ED-15 at 99.

still lacks storage capacity and service pumps, and Respondent has no apparent plan for installing storage capacity or pumps. In summary, Respondent is no closer to having a compliant system now than it was in 2016. For these reasons, the ALJ finds that Respondent has not made good faith efforts to comply with the enforcement action and concludes that the proposed penalty of \$43,750 is appropriate.

VI. RECOMMENDATION

The ALJ recommends that the Commission adopt the attached proposed order, assessing Respondent a penalty \$43,750 and requiring him to comply with the proposed corrective actions.

SIGNED AUGUST 11, 2023

A handwritten signature in cursive script, reading "Susan Rodriguez", is written over a horizontal line.

Susan Rodriguez

Presiding Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
ASSESSING ADMINISTRATIVE PENALTIES AGAINST
RANCH HAND APARTMENTS, LLC
TCEQ DOCKET NO. 2022-0063-PWS-E;
SOAH DOCKET NO. 582-23-05477**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's (ED) Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing an administrative penalty against and requiring certain corrective actions be taken by Ranch Hand Apartments, LLC (Respondent). A Proposal for Decision (PFD) was issued by Susan Rodriguez, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing on the EDPRP on May 3 and 8, 2023.

After considering the ALJ's PFD, the Commission makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Respondent owns and operates a public water system (PWS) located at US Highway 60 near Canyon, Randall County, Texas (Facility).
2. The PWS provides water for human consumption, has eighty-seven connections, and serves at least twenty-five people per day for at least sixty days per year.
3. Respondent signed an Agreed Order that became effective September 6, 2016 (2016 Agreed Order), related to violations at the Facility. Respondent was required to submit plans and specifications for review within 180 days of the effective date of the Order and obtain approval for plans and specifications within 285 days.
4. TCEQ conducted a follow-up investigation at the Facility in November 2018 to determine Respondents' compliance with the 2016 Agreed Order.
5. Among the violations cited during the 2018 investigation were Respondent's failure to provide proper storage capacity, failure to provide service pumps, and failure to obtain review and approval of plans and specifications for the PWS.
6. These violations were addressed through an agreed order effective March 4, 2020 (2020 Agreed Order), which required Respondent to take certain corrective action within 180 days including installing adequate storage capacity, providing two or more service pumps, and submitting plans and specifications for review. Additionally, Respondent was required to obtain approval of the submitted plans and specifications within 270 days of the effective date of the 2020 Agreed Order.
7. As of October 7, 2021, Respondent failed to provide documentation of compliance with the 2020 Agreed Order to TCEQ and the matter was referred for investigation.
8. On November 2, 2021, TCEQ conducted another investigation at the Facility and documented that Respondent:

- a. Failed to provide total storage capacity of 200 gallons per connection, in violation of Texas Health and Safety Code section 341.0315(c), 30 Texas Administrative Code section 290.45(b)(1)(C)(ii), and Ordering Provision No. 2.c.i of the 2020 Agreed Order.
 - b. Failed to provide two or more service pumps having a total capacity of 2.0 gallons per minute (GPM) per connection at each pump station or pressure plane, in violation of Texas Health and Safety Code section 314.0315(c), 30 Texas Administrative Code section 290.45(b)(1)(C)(iii), and Ordering Provision No. 2.c.ii of the 2020 Agreed Order.
 - c. Failed to submit plans and specifications to the ED for review and approval prior to the construction of a new public water supply, in violation of Texas Health and Safety Code section 341.0315(a), 30 Texas Administrative Code section 290.39(e)(1) and (h)(1); and Ordering Provision Nos. 2.c.iii and 2.e of the 2020 Agreed Order.
9. On January 3, 2022, TCEQ issued a Notice of Enforcement letter to Respondent identifying the three violations cited during the November 2021 investigation.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the calculation and assessment of administrative penalties, effective January 28, 2021.
11. Under the Penalty Policy, the Facility is a minor source.
12. Under the Penalty Policy, the violation for failing to provide total storage capacity of 200 gallons per connection:
 - a. is appropriately treated as one violation in order to mitigate the penalty amount;
 - b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;

- c. created the potential for a release of contaminants into the environment that could cause major harm;
 - d. resulted in an adjustment to 15% of the \$5,000 base penalty, as a result of the potential/major characterization of the violation;
 - e. is a violation that continued monthly for twenty-three months;
 - f. accordingly has a base penalty of \$17,250.
- 13. Under the Penalty Policy, the violation for failing to two or more service pumps having a total capacity of 2.0 GPM per connection at each pump station or pressure plane:
 - a. is appropriately treated as one violation in order to mitigate the penalty amount;
 - b. is appropriately analyzed under the Environmental, Property, and Human Health Matrix;
 - c. created the potential for a release of contaminants into the environment that could cause major harm;
 - d. resulted in an adjustment to 15% of the \$5,000 base penalty, as a result of the potential/major characterization of the violation;
 - e. is a violation that continued monthly for twenty-three months;
 - f. accordingly has a base penalty of \$17,250.
- 14. Under the Penalty Policy, the violation for failing to submit plans and specifications for review and approval:
 - a. is appropriately treated as one violation in order to mitigate the penalty amount;
 - b. is appropriately analyzed under the Programmatic Matrix;

- c. is appropriately categorized as major for degree of non-compliance;
 - d. resulted in an adjustment to 10% of the \$5,000 base penalty, as a result of the characterization of the violation;
 - e. is a violation that occurred one time and is appropriately classified as a single event;
 - f. accordingly has a base penalty of \$500.
15. In accordance with the Commission's Penalty Policy, the total base penalty of \$35,000 is enhanced by 25% because of Respondent's compliance history. The ED proposed an administrative penalty of \$43,750 and that Respondent be required to implement certain corrective measures.
 16. On September 7, 2022, the ED filed an EDPRP alleging that Respondent committed the three violations referenced in Finding of Fact No. 8 and mailed a copy to the Office of Public Interest Counsel (OPIC) and Respondent.
 17. On September 20, 2022, Respondent filed an answer to the EDPRP and requested a hearing.
 18. On October 25, 2022, the ED filed a letter asking the Commission's Chief Clerk to refer this case to SOAH for hearing. The Chief Clerk docketed the case with SOAH on November 15, 2022, and filed the EDPRP on the same date.
 19. On December 22, 2022, a SOAH ALJ issued Order No. 1 providing notice of the preliminary hearing.
 20. The parties waived their right appear at the preliminary hearing, submitted an agreed procedural schedule, and asked the ALJ to admit jurisdictional exhibits into evidence.
 21. On January 9, 2023, the ALJ issued Order No. 2 adopting the parties' agreed procedural schedule, setting the matter for hearing on May 3, 2023, and admitting jurisdictional exhibits.

22. Together, the EDPRP and SOAH Order No. 2 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
23. The hearing convened via Zoom videoconference on May 3 and 8, 2023, before ALJ Susan Rodriguez of SOAH. The ED was represented by attorney Megan Grace. Respondent was represented by Mark Hughes. The Office of Public Interest Counsel (OPIC) was represented by attorney Eli Martinez. The record closed on June 19, 2023, to allow the parties to file written closing arguments.

II. CONCLUSIONS OF LAW

1. The Commission may assess an administrative penalty against any person who violates a provision of the Texas Health and Safety Code within the Commission's jurisdiction, or any rule, order, or permit adopted or issued thereunder. Tex. Health & Safety Code § 341.049.
2. 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).
3. In determining the amount of the penalty, the Commission is required to consider certain factors, and the Penalty Policy implements those factors. Tex. Health & Safety Code § 341.049.
4. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a PFD with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
5. The ED has the burden of proving the violations alleged, and the appropriateness of any technical ordering provisions, by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17(b).

6. As required by Texas Health and Safety Code section 341.049 and 30 Texas Administrative Code sections 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations and the penalty proposed therein.
7. As required by Texas Government Code sections 2001.051 and .052; Texas Health and Safety Code section 341.049; 1 Texas Administrative Code section 155.401; 30 Texas Administrative Code sections 1.11, 70.104, and 80.6(b)(3), Respondent was notified of the hearing on the alleged violations and the proposed penalty and corrective action.
8. Respondent violated Texas Health and Safety Code sections 341.0315(c) and .035(a).
9. Respondent violated 30 Texas Administrative Code sections 290.39(e)(1) and (h)(1), and 290.45(b)(1)(C)(ii) and (iii).
10. Respondent violated TCEQ Docket No. 2019-0303-PWS-E Ordering Provision Nos. 2.c.i, 2.c.ii, 2.c.iii, and 2.e.
11. The penalty that the ED proposed for Respondent's violations in this case conforms to the requirements of Texas Health and Safety Code section 341.049 and the Commission's Penalty Policy.
12. Respondent did not meet its burden of showing that the proposed penalty in this matter should be reduced based on good faith efforts to comply.
13. Respondent should be assessed a total administrative penalty of \$43,750 for the violations proved by the ED in this case and required to perform certain corrective actions.

**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 Commission Order, Respondent shall pay an administrative penalty in the amount of \$43,750 for its violations

of Texas Health and Safety Code sections 341.0315(c) and .035(a); 30 Texas Administrative Code sections 290.39(e)(1) and (h)(1), and 290.45(B)(1)(C)(ii) and (iii); and TCEQ Agreed Order Docket No. 2019-0303-PWS-E, Ordering Provisions Nos. 2.c.i, 2.c.ii, 2.c.iii, and 2.e.

2. Checks rendered to pay penalties imposed by this Order shall be made out to “TCEQ.” Administrative penalty payments shall be sent with the notation “Re: Ranch Hand Apartments, LLC, TCEQ Docket No. 2022-0063-PWS-E” and mailed to:

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

3. Respondent shall also undertake the following technical requirements:
 - a. Within 180 days after the effective date of the Commission Order:
 - i. Provide a total storage capacity of 200 gallons per connection, in accordance with 30 Texas Administrative Code section 290.45;
 - ii. Provide two or more service pumps having a total capacity of at least 2.0 GPM per connection at each pump station or pressure plane, in accordance with 30 Texas Administrative Code section 290.45; and
 - iii. Submit plans and specifications of the PWS for review and approval, in accordance with 30 Texas Administrative Code section 290.39. The plans and specifications shall be submitted to:

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

Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning plans and

specifications within 15 days after the date of such requests, or by any other deadline specified in writing.

- b. Within 195 days after the effective date of the Commission Order, submit written certification in accordance with Corrective Action Ordering Provision No. 13.e., to demonstrate compliance with Ordering Provisions Nos. 13.a.i. through 13.a.iii.
- c. Within 270 days after the effective date of this Order, obtain approval of the plans and specifications for the PWS, in accordance with 30 Texas Administrative Code section 290.39.
- d. Within 285 days after the effective date of the Commission Order, submit written certification in accordance with Corrective Action Ordering Provision No. 13.e., to demonstrate compliance with Ordering Provision No. 13.c.
- e. The certifications required by these Corrective Action Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Respondent shall submit the written certifications and copies of documentation necessary to demonstrate compliance with these Corrective Action Ordering Provisions 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 Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final. Tex. Gov't Code § 2001.144; 30 Tex. Admin. Code § 80.273.
7. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
8. 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

John Niermann, Chariman
For the Commission