

Executive Summary – Enforcement Matter – Case No. 64042

Aqua Texas, Inc.

RN101219947

Docket No. 2023-0660-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three repeated enforcement actions (or two orders with nuisance violations) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

No

Location(s) Where Violation(s) Occurred:

Hackberry Creek Subdivision, 4635 North Farm-to-Market Road 565, Baytown, Chambers County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 10, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$2,425

Amount Deferred for Naturally Occurring Inorganic Contaminants: \$2,425

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - N/A

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: May 1, 2023 through May 12, 2023

Date(s) of NOE(s): May 12, 2023

**Executive Summary – Enforcement Matter – Case No. 64042
Aqua Texas, Inc.
RN101219947
Docket No. 2023-0660-PWS-E**

Violation Information

Failed to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average [30 TEX. ADMIN. CODE § 290.106(f)(3)(C) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By September 29, 2023, the Respondent returned to compliance with the maximum contaminant level for arsenic at the Facility.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Tessa Bond, Enforcement Division, Enforcement Team 4, MC 219, (512) 239-1269; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Scott Foltz, Compliance Manager, Aqua Texas, Inc., 1106 Clayton Lane Suite 400W, Austin, Texas 78723

Craig Blanchette, President, Aqua Texas, Inc., 1106 Clayton Lane Suite 400W, Austin, Texas 78723

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	15-May-2023			
	PCW	19-May-2023	Screening	18-May-2023	EPA Due 30-Jun-2023

RESPONDENT/FACILITY INFORMATION	
Respondent	Aqua Texas, Inc.
Reg. Ent. Ref. No.	RN101219947
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	64042	No. of Violations	1
Docket No.	2023-0660-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Tessa Bond
		EC's Team	Enforcement Team 4
Admin. Penalty \$	Limit Minimum \$50	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	7.0% Adjustment	Subtotals 2, 3, & 7	\$175
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Notes: Enhancement for one NOV with the same/similar violations and one NOV with dissimilar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$2,792
 Estimated Cost of Compliance \$40,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,425
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$2,425
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,425
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DEFERRAL	100.0%	Reduction	Adjustment	-\$2,425
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: The Executive Director recommends a conditional deferral for naturally occurring constituents.

PAYABLE PENALTY	\$0
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Screening Date 18-May-2023

Docket No. 2023-0660-PWS-E

PCW

Respondent Aqua Texas, Inc.

Policy Revision 5 (January 28, 2021)

Case ID No. 64042

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN101219947

Media Public Water Supply

Enf. Coordinator Tessa Bond

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with the same/similar violations and one NOV with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 7%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 7%

Screening Date 18-May-2023

Docket No. 2023-0660-PWS-E

PCW

Respondent Aqua Texas, Inc.

Policy Revision 5 (January 28, 2021)

Case ID No. 64042

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN101219947

Media Public Water Supply

Enf. Coordinator Tessa Bond

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.106(f)(3)(C) and Tex. Health & Safety Code § 341.0315(c)

Violation Description Failed to comply with the maximum contaminant level ("MCL") of 0.010 milligram per liter ("mg/L") for arsenic based on a running annual average. Specifically, the running annual average concentrations for arsenic were 0.012 mg/L for the third quarter of 2022 and 0.011 mg/L for the fourth quarter of 2022 and the first quarter of 2023.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR			Harm			
	Release	Major	Moderate	Minor		
	Actual		x		Percent	50.0%
	Potential					

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent	0.0%

Matrix Notes Exceeding the MCL for arsenic caused the persons served by the Facility to be exposed to a significant amount of pollutants which do not exceed levels protective of human health.

Adjustment \$2,500

\$2,500

Violation Events

Number of Violation Events 1 273 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$2,500

One annual event is recommended.

Good Faith Efforts to Comply

10.0%

Reduction \$250

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		

Notes The Respondent achieved compliance on September 29, 2023.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,792

Violation Final Penalty Total \$2,425

This violation Final Assessed Penalty (adjusted for limits) \$2,425

Economic Benefit Worksheet

Respondent Aqua Texas, Inc.
Case ID No. 64042
Reg. Ent. Reference No. RN101219947
Media Violation No. Public Water Supply
 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$40,000	30-Sep-2022	29-Sep-2023	1.00	\$133	\$2,659	\$2,792
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 The delayed cost includes the estimated amount to investigate, identify, and implement corrective actions to return to compliance with the MCL for arsenic, calculated from the last day of the first quarter of noncompliance to the date of compliance.

Avoided Costs

ANNUALIZE avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs
 (This area is currently blank for input.)

Approx. Cost of Compliance	<input style="width: 90%;" type="text" value="\$40,000"/>	TOTAL	<input style="width: 90%;" type="text" value="\$2,792"/>
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Compliance History Report

Compliance History Report for CN604062463, RN101219947, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN604062463, Aqua Texas, Inc. **Classification:** SATISFACTORY **Rating:** 3.56

Regulated Entity: RN101219947, HACKBERRY CREEK SUBDIVISION **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 4635 NORTH FARM-TO-MARKET ROAD 565 NEAR BAYTOWN, CHAMBERS COUNTY, TEXAS

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION
0360100

Compliance History Period: September 01, 2018 to August 31, 2023 **Rating Year:** 2023 **Rating Date:** 09/01/2023

Date Compliance History Report Prepared: April 04, 2024

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 04, 2019 to April 04, 2024

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Tessa Bond **Phone:** (512) 239-1269

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1 Date: 04/28/2023 (1897775)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)
Description: ARS MCL 1Q2023 - During the 1st quarter of 2023 the system violated the maximum contaminant level for arsenic with a RAA of 0.011 mg/L. ETT Point Value = 5

2 Date: 10/25/2023 (1930508)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(l)
Description: Failure to flush all dead-end mains on a monthly basis.
Self Report? NO Classification: Moderate
Citation: TWC Chapter 26 26.121
Description: Failure to prevent the discharge of municipal waste or industrial waste into or adjacent to any water in the state except as authorized by permit or order issued by the commission.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(4)
Description: Failure to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.39(l)(4)
Description: Failure to meet the conditions of a granted exception.

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

adjacent to any water in the state except as authorized by permit or order issued by the commission.

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter D 290.46(m)(4)		
Description:	Failure to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter D 290.39(l)(4)		
Description:	Failure to meet the conditions of a granted exception.		

* NOVs applicable for the Compliance History rating period 9/1/2018 to 8/31/2023

Appendix B
All Investigations Conducted During Component Period April 04, 2019 and April 04, 2024

Item 1	August 22, 2019**	(1577929)
Item 2	May 09, 2023**	(1897775)
Item 3	May 12, 2023**	(1898129)
Item 4	October 25, 2023	(1930508)

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2018 and 08/31/2023.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
AQUA TEXAS, INC.
RN101219947

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§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2023-0660-PWS-E

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Aqua Texas, Inc. (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply located at 4635 North Farm-to-Market Road 565 near Baytown, Chambers County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 60 service connections, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(73).
2. During a record review for the Facility conducted on May 1, 2023, through May 12, 2023, an investigator documented that the running annual average concentrations for arsenic were 0.012 milligram per liter ("mg/L") for the third quarter of 2022 and 0.011 mg/L for the fourth quarter of 2022 and the first quarter of 2023.
3. The Executive Director recognizes that by September 29, 2023, the Respondent returned to compliance with the maximum contaminant level ("MCL") for arsenic at the Facility.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, the Respondent failed to comply with the MCL of 0.010 mg/L for arsenic based on a running annual average, in violation of 30 TEX. ADMIN. CODE § 290.106(f)(3)(C) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049(a), the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of \$2,425 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The amount of \$2,425 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any requirement contained in this Order, the Executive Director may demand payment of all or part of the conditionally deferred penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Aqua Texas, Inc., Docket No. 2023-0660-PWS-E" to:

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

2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and

substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

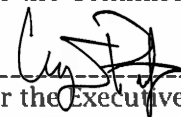
5. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
6. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
7. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

5/28/2024

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the OAG for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the OAG of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

5/27


Signature

4/16/24

Date

Craig Blanchette

President

Name (Printed or typed)
Authorized Representative of
Aqua Texas, Inc.

Title

If mailing address has changed, please check this box and provide the new address below:

Instructions: Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.