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June 23, 2020

Texas Commission on Environmental Quality
Mr. Ryan Byer
Enforcement Coordinator
P.O. Box 13087
Austin, Texas 78711-3087

Sent also via fax: (512) 239-2550

Re: Public comment regarding proposed Agreed Order; Docket No. 2019-1661-PWS-E concerning the City of Laredo (RN100524099)

Dear Mr. Byer:

This public comment is submitted by Texas RioGrande Legal Aid, Inc., on behalf of our client Acción de Gente Unida para Agua Segura! (AGUAS!), in connection with the group's opposition to the above-mentioned proposed Agreed Order (AO) concerning the City of Laredo (the City). AGUAS! is a community group based in Laredo, Texas, that was formed in response to the City's ongoing failure to abide by its legal responsibility as a public water system to protect the residents of Laredo from unsafe drinking water.

The AO at issue attempts to resolve an enforcement action initiated by the Texas Commission on Environmental Quality (TCEQ) against the City for violations of state and federal water quality standards, including the City's failure to issue a boil water notice (BWN) to customers within 24 hours of a low disinfectant residual, under TEX. ADMIN CODE § 290.46(q)(1), (q)(5)). In this case, City leadership waited 168 hours, or seven days, to issue a BWN to customers – even after TCEQ explicitly told the City, on multiple occasions, that a notice was required (TCEQ Investigation Report #1591938). When the City eventually issued a BWN to customers, the advisory notice lasted for eleven-days, from September 28, 2019 to October 9, 2019, and disproportionately affected the residents of south Laredo.¹

¹ The City issued a city-wide BWN on September 28, 2019, but amended the notice on September 29, 2019, to include only the areas that were affected by low residual levels including the south, central, and east parts of the city. TCEQ Investigation Report #1591938, p. 10. Historically, these areas lack economic and political influence, particularly when compared to their more powerful neighbors to the north, who only bore the burdens of the BWN for a single day.

In January 2020, AGUAS! sent a letter to TCEQ expressing the group's deep concern regarding the untimely BWN and asked the agency to consider the City's culpability and obvious lack of good faith effort to comply with the law when assessing administrative penalties for the violations "alleged" in the AO (*See Attachment A*). Once again, AGUAS! seeks to engage TCEQ to utilize its enforcement measures and diligently prosecute the City for its pattern and practice of prioritizing its political image over its duty as a public water supplier to provide safe drinking water to its paying customers.

Section 7.075 of the Texas Water Code states that before TCEQ approves an administrative order or proposed agreement to settle an administrative enforcement action, "The commission shall promptly consider any written [public] comments and *may withdraw or withhold consent to the proposed order or agreement* if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with" the laws within the commission's jurisdiction. TEX. WATER CODE § 7.075(b) (emphasis added). AGUAS! requests that TCEQ withhold approval of the AO and instead impose a Findings Order under 30 TEX. ADMIN. CODE § 70.11, because the AO is wholly inadequate to command the City into any form of meaningful compliance and is improper considering TCEQ's statutory authority to assess administrative penalties under TEX. HEALTH & SAFETY CODE § 341.049.

I. TCEQ should withhold consent to the AO and instead impose a Findings Agreed Order that requires the City to admit, rather than deny, that it violated the SDWA, because the City is clearly guilty.

Utterly frustrated by the City's indifference and unprofessional response to his complaint about water quality problems at his home in Barrio Azteca, located in south Laredo, Citizen X filed a formal complaint with TCEQ. After investigating the complaint, which included testing samples of the water at different points in Laredo, TEQ determined that the City's drinking water chlorine level fell below the safe drinking water standard mandated by the state's regulations, which implement the SDWA requirements that are specifically enforced by TCEQ. The low chlorine levels were caused by defective chlorination injection mechanisms in water tanks located mostly in south Laredo. It was not until TCEQ began its investigation did the City start paying any real attention to this drinking water problem.

TCEQ's investigation found that the City had committed the following two violations of the Texas Administrative Code, which implement the SDWA:

- (1) Failed to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment, in violation of 30 TEX. ADMIN CODE § 290.46(m).² Specifically,

² This violation regarding the state of the Lyons South Tank was first noted during a TCEQ investigation in August 2018 (TCEQ Investigation #1512269). On March 8, 2019, the City informed TCEQ that its plans to rehabilitate the Lyons South Tank would be submitted soon, but a November 2019 comment in TCEQ Investigation Report #1591938 states that, "[n]o repairs

the Lyons South Ground Storage Tank was in poor condition and was leaking in several areas on the wall of the tank.

(2) Failed to issue a boil water notice to customers of the Facility within 24 hours of a low disinfectant residual using the prescribed format as specified in 30 TEX. ADMIN CODE § 290.46(q)(1) and (q)(5). Specifically, a low disinfectant residual was documented on September 19, 2019. The Executive Director required the Respondent to issue a boil water notice by September 21, 2019, however the notice was not issued until September 28, 2019.

These findings of SDWA violations are clearly supported by unambiguous facts and data. However, to AGUAS! outrage, these two clear cut violations became mere *allegations* in Paragraph II of TCEQ's AO. The selling out of the consumers' interests by TCEQ "jumps off the page, and slaps you in the face" at Section I.3 of the AO, which states: "The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule." The residents of Laredo take a second hit in Section III of the AO, which states: "The Respondent (the City) generally denies each allegation in Section II ("Allegations")." Rather than require the City to make a *mea culpa* confession of wrongdoing in the AO, and nailing down the "allegations" as findings, TCEQ lets the City walk away free of any guilt even though the facts reflect the City indeed violated these two SDWA requirements.

There is ample evidence that the City was deliberately indifferent to its duty to maintain south Laredo's drinking water "system and facilities" in good working condition, as specifically exemplified by the poor condition of the Lyons South Ground Storage Tank, with several leaks on its wall, and demonstrated gross "indifference to its legal duty" to issue as soon as possible and within 24 hours, not 7 days, a boil water notice to the consumers of Laredo's public water system. The final blow to the people of Laredo, is the laughable amount in penalties that the City was asked to pay under the no-admission of guilt AO. Suffice to say, AGUAS! and its members, are indignant by the AO and therefore oppose it.

TCEQ had two options as to the AO it could have pursued to ensure the City's compliance with the SDWA: (1) a no-admission of guilt AO, which is the road TCEQ has taken here, and (2) a Findings Agreed Order, which is the AO that AGUAS! demands be ultimately adopted by the Commission.³ The facts underlying this safe drinking water controversy, clearly establish a

have yet been conducted on the Lyons Ground Storage Tank" (TCEQ Investigation Report #1591938, p. 13). Perhaps the city would not have to issue BWNs to its customers if it prioritized the quality of its drinking water and took the necessary steps to make bare minimum repairs to and maintain its public water system facilities.

³ Agreed Orders are a type of administrative order and is used when the respondent agrees to the terms and conditions of the administrative order, including the penalty. There are two kinds of agreed orders: (1) 1660 Orders are names for Senate Bill (SB) 1660, 74th Legislature, (codified in TEX. WATER CODE §7.070) and includes statements that "the occurrence of any violation is in dispute and that the entry of the agreed order shall not constitute an admission by the Respondent

sound and authoritative basis for TCEQ to have taken the road that leads to a Findings Agreed Order requiring the City to face its violations of state and federal law. Specifically, TCEQ has the authority to impose a Findings Agreed Order under 30 TEX. ADMIN. CODE § 70.11, pursuant to the following criteria: “(b) An agreed order may be drafted as a findings order when any of the following six criteria are satisfied: (1) absence of management practices designed to ensure compliance. . .(6) indifference to legal duty.”

It is clear to AGUAS! that TCEQ chose the path of least resistance to reach a compromise with the City, rather than diligently prosecute the City to hold it accountable to the consumers of the City’s water supply for violations of the SDWA. A Findings AO nails down findings of violations in the AO rather than just refer to “allegations” of violations and requires an admission of wrongdoing by the violator of the SDWA. Importantly, a Findings AO essentially creates a legal tract record and can make a difference if the City violates the SDWA in the future, as TCEQ’s penalties for current violations are connected to past AOs and can serve as a basis for stiffer penalties. Further, an in-fact finding cultivates public trust and confidence that TCEQ will diligently prosecute violators and take all necessary enforcement actions to ensure compliance with non-negotiable water standards.

A Findings Agreed Order is more than warranted in this case and TCEQ could have easily and fairly taken the road that lead to a Findings Agreed Order that made the following findings and conclusions of law, both fully justified and supported by one or more of the criterion for a Findings Agreed Order, because the City’s SDWA violations fall squarely within such criterion.

a. The Lyons South Ground Storage Tank

TCEQ’s investigation revealed that the City failed to maintain in good working condition its drinking water facilities, primarily located in south Laredo, citing that five of six water tanks were without proper chlorine injection mechanisms, and specifically underscored the “poor condition,” with “leaks on its wall,” of the Lyons South Ground Storage Tank. On its face, “leaks on its wall” and “poor condition” indicate that the water utilities department does not have “management practices designed to ensure compliance” with this requirement of the SDWA (30 TEX. ADMIN. CODE § 70.11(b)(1)). But for the City’s failure to have “management practices designed to ensure compliance” there would have been compliance with this requirement, resulting in the maintenance and good working order of the Lyons South Ground Storage Tank. This very findings criterion justifies a Findings Agreed Order.

of any violation alleged in the agreed order” and “that the agreed administrative order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General to: enforce the terms of the order; or pursue violations of the Water Code or Health and Safety Code; and (2) Findings Orders are drafted by TCEQ and include findings of fact and conclusions of law. A Findings Order may be imposed if any of the six criteria are satisfied in 30 TEX. ADMIN. CODE § 70.11. *See generally* Enforcement Definitions, TEX. COMM’N ON ENV’T L QUALITY, <https://www.tceq.texas.gov/compliance/enforcement/definitions.html#agreed>.

Moreover, as previously mentioned in footnote 2, the City had actual knowledge that the Lyons South Ground Storage Tank needed serious repair since at least August 2018, when the City was originally cited for the facility's poor condition (TCEQ Investigation #1512269). This further indicates that the City acted with "indifference to its legal duty" to maintain its drinking water facilities in good working condition (30 TEX. ADMIN. CODE § 70.11(b)(6)).

b. Failure to timely issue BWN

There is also smoking gun evidence that the City manifested a conscious "indifference to its legal duty" to issue a boil water notice within 24 hours from the date TCEQ ordered it to do so (30 TEX. ADMIN. CODE § 70.11(b)(6)). For over 7 days from September 21, 2019 to the September 28, 2019, the City did everything to save political face rather than abide by its legal duty under the SDWA to issue the BWN. The truth is that the City was more concerned with the political fallout that it might cause if its customers knew that leadership and personnel at the City's Utilities Department had failed to comply with the SDWA under the Mayor's and City Council's watch.

There is evidence that Riazul Mia, the Director of the City's Utilities Department at the time, tried to figure out how to avoid issuing a BWN rather than immediately comply with TCEQ's orders. An e-mail from Mia to other utilities department personnel, obtained through a Public Information Act Request to the City reads as follows: "Looks like TCEQ is not backing down from boil water notice requirements . . . *We will be in violation regarding the regulations. So, my answer to TCEQ is still no to boil water notice unless, we have positive sample*" (See Attachment B) (emphasis added). This evidence supports a finding that the City had an "absence of management practices designed to ensure compliance" with the issuance of the boil the water notice within 24 hours as well as acted with "indifference to its legal duty" to maintain its drinking water facilities in good working condition (30 TEX. ADMIN. CODE § 70.11(b)(1), (6)).

It is not a defense to a finding that the City violated the SDWA that nobody was harmed by the drinking water during the period that the City was required to, but did not, issue a boil water notice. First, nobody was harmed by the potentially contaminated water *that we know of*. Second, the SDWA is not subject to post-hoc rationalization: "no harm, no foul." TCEQ calls the foul, not the City, and once it's called, the BWN must be issued according to TCEQ's order. The City cannot risk the health of its residents by failing to timely issue the notice regardless whether, in its opinion, there is no harm to people's health if the consumers do not boil it. To fail to timely issue a BWN under the facts and circumstances of this case renders the City guilty of "indifference to its legal duty" to do so. TCEQ's own investigation and its referral of this violation for enforcement indicated that there was an absence of "good faith" by the City in failing to timely issue the notice. A Findings AO that nails down this finding and conclusion of law in a Findings AO is therefore demanded by AGUAS! and its members. Anything less is totally unacceptable. Anything less is not diligent prosecution by TCEQ.

The City's failure to comply with the SDWA, as noted above herein, tragically discriminates against the residents of south Laredo based on their Mexican American background coupled with their low-income status. In other words, there is evidence of a systemic

deliberate indifference to maintaining the system and equipment in south Laredo. Indeed, five of the six tanks flagged by the investigators with deficient injection of chlorine in the water are in south Laredo. The City is therefore further guilty of “indifference to its legal duty” not to discriminate in its allocation of personnel and resources to comply with the requirement that it maintain in good working condition its drinking water system and equipment that serves the citizens of south Laredo. A findings Agreed Order is therefore demanded that supports this finding too.

II. The AO is improper considering TCEQ’s statutory authority to assess administrative penalties for violations for violations of the SDWA.

Under TEX. HEALTH & SAFETY CODE § 341.049, TCEQ has broad discretion in assessing administrative penalties against public water systems for violations of state and federal water quality standards. When determining an administrative penalty, TCEQ is required to consider several factors related to the alleged violator and circumstances surrounding the violation; however, “[t]he penalty shall not be less than \$50 and not more than \$5,000 for each violation” TEX. HEALTH & SAFETY CODE § 341.049(a). Importantly, if a violation is ongoing, each day of the continuing violation may be considered a separate violation for the purpose of assessing penalties. *Id.* Here, TCEQ assessed an administrative penalty of \$2,767 for the two violations cited in the AO and ordered the City to undertake specific technical requirements regarding its failure to maintain the Lyons South Ground Storage Tank to ensure the good working condition and general appearance of the system’s facilities and equipment.⁴

Specifically, TCEQ calculated that the City’s failure to issue a BWN to customers in violation of 30 TEX. ADMIN CODE § 290.46(q)(1), (q)(5), warranted an administrative penalty of \$2,550. In coming to this conclusion, TCEQ must have determined that the City’s ongoing, 7 day failure to issue a BWN to its customers should be counted as a single violation rather than utilizing its authority under TEX. HEALTH & SAFETY CODE § 341.049(a) to count the continuing violations as seven separate violations. AGUAS! demands to know how TCEQ concluded that this ongoing weeklong SDWA violation should be counted as a single violation. The City outright defied TCEQ, but TCEQ refuses to hold the City accountable.

The facts of the enforcement action at hand as well as past Agreed Orders between the City and TCEQ warrant a drastic increase to the insufficient administrative penalty based on the City’s history and extent of previous violations under TEX. HEALTH & SAFETY CODE § 341.049(b)(2)(A). Absent any sense of accountability to TCEQ or consumers, it is not surprising that TCEQ Investigation Report #1591938 found that “[n]umerous entries on [the City’s] operator logs indicated chlorine levels in tanks and distribution sites lower than the minimum required level of 0.5 mg/L *have been ongoing since at least May 2019*” (TCEQ Investigation Report #1591938, p. 3) (emphasis added). The same operator logs indicated that “[n]itrification has potentially been *occurring at least since May 2019.*” (*Id.*) (emphasis added). The residents of

⁴ The ordering provisions concerning the Lyons South Ground Storage Tank contained in the 1660 Order (AO) imposed in this case essentially amount to TCEQ politely asking the City to remedy a SDWA violation that the agency originally discovered in August 2018.

Laredo have no way of knowing, and should not have to worry about, whether the City is properly treating and maintaining the public water supply. This is dangerous and if left unchecked, the operator logs strongly suggest that the City will continue to conduct its public water system operations in violation of the SDWA and its implementing regulations.

Riazul Mia, the City's Utilities Director at the time, argued that the City should have been able to pay a fine to TCEQ rather than issue a BWN, because "Boil water notices elicit immediate fear in any community...which is why he tried to fight it" (Julia Wallace, *Laredo utility director: City should have been fined, not made to issue 'scary' boil water notice*, Laredo Morning Times (Oct. 15, 2019) (See Attachment C). Mia further complained that "[i]t's getting tougher and tougher to comply with regulation...[t]hat's why [the City] always fight[s] with the regulators" (*Id.*). The purpose of a BWN is to alert consumers to the possibility of harmful levels of bacteria and other pathogens in the public water supply, so that consumers can make informed decisions regarding their water use and consumption until potentially contaminated water is no longer a threat. Here, the facts were clear – TCEQ documented that the City could not maintain chlorine residuals, which created the opportunity for bacterial contamination and the need to alert consumers so that they could take whatever precautionary measures they deemed necessary to protect their health. The issuance of the BWN in this case was not discretionary and the residents of Laredo deserve solution-oriented action and transparency from the City's Utilities Department, not excuses framed in overly paternalistic rhetoric.

To protect consumers from unsafe drinking water, the federal Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.* (SDWA), and its implementing regulations, requires public water suppliers to maintain minimum levels of disinfectants throughout distribution systems, conduct routine monitoring and testing of disinfectant levels to ensure that the water supply is properly treated, and notify consumers when the drinking water supply is potentially compromised. The eleven-day BWN was required after the City was unable to maintain minimum levels of required disinfectant residual (0.5 mg/L) throughout the water system. TCEQ notified the City that a BWN was required by September 21, 2019; however, the BWN was not issued until seven days later, despite dozens of total chlorine measurements reading as low as .06 mg/L (TCEQ Investigation Report #1591938, p. 6–10).

The City's inability to properly maintain and accurately report on disinfectant residual levels is a reoccurring issue and is not isolated to the events that led to the untimely BWN in 2019 (See Attachment D).⁵ In fact, the City is a repeat offender, as evidenced by Agreed Order (Docket No. 2005-1996-MLM-E (May 11, 2007) which reveals that the City violated the same exact SDWA standards violated here, in 2007. Further, during a September 2016 investigation, TCEQ documented that the City was in violation of the same 0.5 mg/L total chlorine requirement that caused the eleven-day BWN in 2019 (Agreed Order Docket No. 2017-0204-PWS-E (Mar. 27, 2018)). Unfortunately, like the AO here, this enforcement action ended in an Agreed Order

⁵ This chart further supports AGUAS! demand that TCEQ impose a Findings Order in this case. Specifically, this chart applies to 30 TEX. ADMIN. CODE § 70.11(b)(5) that a Findings Order may be warranted when, "[r]egardless of specific violations, a respondent has demonstrated a pattern of non-compliance with environmental laws."

that allowed the City to generally deny the total chlorine violation – perpetuating and arguably contributing to the BWN violation at hand.

Additional Agreed Orders between TCEQ and the City outline the City’s pattern and practice of altogether forgoing required routine coliform monitoring and sampling (Agreed Order Docket No. 2016-0082-PWS-E (Sept. 21, 2016) and Agreed Order Docket No. 2017-0204-PWS-E (Mar. 27, 2018)). Routine coliform monitoring is so important that a public water system is required to provide public notification to its customers when it fails to monitor coliform according to state and federal standards (30 TEX. ADMIN CODE § 290.109). Yet, past Agreed Orders show that the City has repetitively failed to notify the public, when required to do so by law, in connection with its failure to monitor and maintain disinfectant residual levels throughout the water supply (Agreed Order Docket No. 2016-0082-PWS-E (Sept. 21, 2016) and Agreed Order Docket No. 2017-0204-PWS-E (Mar. 27, 2018)).

The City is clearly deliberately indifferent to the systemic issues that plague Laredo’s public water system. This indifference when considered with the City’s pattern and practice of failing to inform the public when their water supply could be potentially contaminated is a dangerous and slippery slope and can not go unchecked by TCEQ. The AO is wholly inadequate in remedying the violations it seeks to address. The \$2,767 administrative penalty is a mere slap on the wrist and will do little to deter City leadership that prioritizes “fighting with regulators” over taking steps to fix the problem and restore consumer trust. Further, the ordering provisions in the AO make no mention of the untimely BWN violation. This is unacceptable. At the very least, TCEQ should require the City to develop a written protocol to ensure that all future BWN are issued to customers within 24 hours, in accordance with 30 TEX. ADMIN. CODE § 290.46. Consent to the AO is inappropriate, and TCEQ should reassess the AO to reflect enforcement measures that diligently prosecute the City for failing to timely issue a BWN to the residents of Laredo.

The existing AO provides no assurance to the residents of Laredo that TCEQ is exercising its enforcement responsibility to hold the City accountable for the underlying issues that led to the eleven-day BWN, including the City’s failure to accept any responsibility for its intentional delay in issuing the notice, thus leaving the door wide open for the City to continue to commit the same or similar violations in the future. AGUAS! demands that TCEQ withhold consent to the AO and instead impose a Findings Order based on the criteria under 30 TEX. ADMIN. CODE § 70.11. The City outright defied TCEQ’s express instructions to issue a BWN. As the public comment makes clear, the City is indifferent to the law – whether TCEQ is watching or not. If TCEQ refuses to take its sworn duty to enforce the provisions of the SDWA seriously, AGUAS! will not hesitate to do so on behalf of the residents of south Laredo, as the City’s public water system is the only option for water supply to them.

AGUAS! members would like to comment in-person at the Commissioner’s Agenda where the proposed order will be reviewed

Respectfully Submitted,

TEXAS RIOGRANDE LEGAL AID, INC.



Kristen Adams

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Unida para Agua Segura! (AGUAS!)



Attachment A

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January 27, 2020

Ryan Byer, MC219
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**RE: Assessment of Administrative Penalties Against the
City of Laredo (PWS_2400001) for Violation No. 733814**

Dear Mr. Byer:

This letter is sent by Texas RioGrande Legal Aid, Inc. on behalf of our client Acción de Gente Unida para Agua Segura! (“AGUAS!”). AGUAS! is a community organization comprised of concerned citizens of Laredo, Texas, and was formed in response to the City of Laredo’s (“the City”) ongoing failure to abide by its legal responsibility as a public water system to protect the residents of Laredo from unsafe drinking water.

The proper disinfection of drinking water is critical to protecting consumers from disease-causing microorganisms. Water that is not properly treated or disinfected, or which travels through an improperly maintained distribution system, has the potential to cause a wide array of health risks. Accordingly, AGUAS! has been closely monitoring the City’s management of water treatment and the operation of its water supply system since the events leading up to the recent Boil Water Notice (“BWN”) issued by the City from September 28, 2019 – October 9, 2019.

Since the release of Texas Commission on Environmental Quality’s (“TCEQ”) Investigation Report #1591938, our monitoring interests have grown to include TCEQ’s oversight of the City of Laredo as well as any and all action pursued by the agency as a result of the Enforcement Action Referral dated November 18, 2019. AGUAS! seeks to ensure that the State of Texas takes appropriate measures to deter the City from endangering citizens by violating the federal Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.* and its implementing regulations.

Although Agreed Orders between TCEQ and the City reveal a pattern of deliberate indifference by the City towards providing safe drinking water that meets or exceeds all state and federal health-based requirements this letter specifically concerns the City’s recent violation of 30 TAC § 290.46(q)(1) for failure to issue a BWN to affected customers no later than 24 hours after the City was unable to maintain Total Chlorine (“TCl”) levels over 0.5 milligrams per liter (mg/L) throughout the distribution and each storage tank (hereinafter referred to as “Violation No. 733814”).

After careful review of TCEQ's Penalty Policy, we write this letter to engage the Enforcement Division in meaningful public participation regarding the division's computation and assessment of administrative penalties against the City for Violation No. 733814. AGUAS! will work diligently to arrive at permanent and verifiable solutions to these problems. We hope that TCEQ will do the same.

TCEQ's Penalty Policy explicitly provides that staff may recommend adjustment of the penalty amount, on a case by case basis, and upon consideration of "other factors that justice may require." While justice is not always measurable, water quality is, and the City has continuously fallen short of its obligations under both Texas law and the federal Safe Drinking Water Act to distribute potable water to its citizens. The City's culpability in failing to provide public notice of substandard water quality to consumers and its lack of good faith effort to comply throughout the events leading up to this enforcement action are factors that TCEQ must consider when assessing administrative penalties for Violation No. 733814. As outlined below, evidence strongly suggests that justice requires an upward adjustment of 50% to the City's total base penalty amount based on the following factors unique to the City's failure to issue a BWN when required to do so by law:

Factor	Percentage Increase
Culpability	25%
Lack of good faith effort to comply	25%

I. The City of Laredo is culpable in failing to issue the BWN within 24 hours as prescribed by law.

We understand that culpability, as described in TCEQ's Penalty Policy and as applied in the agency's assessment of administrative penalties, is only determined for those specific individuals who are required to be registered, certified, or licensed by the TCEQ before performing certain activities rather than on a site-specific basis. However, multiple City officials within Laredo's Utilities Department could have reasonably anticipated and avoided Violation No. 733814. The law is clear as to when a public water system is required to issue a BWN. As outlined above, the City was required under 30 TAC § 290.46(q)(1) to issue a BWN no later than 24 hours after the City was unable to maintain appropriate chlorine levels. The decision to issue a BWN may not require a license, but the City abused its discretion as a public water system operator when it failed to prioritize the safety of its citizen and issue a BWN within 24 hours after being legally required to do so. Justice requires TCEQ to take into account the City's culpability when adjusting administrative penalties.

a. Factors to consider concerning the City's Culpability in Violation No. 733814.

TCEQ's Penalty Policy defines "culpability" as "whether the respondent could have reasonably anticipated and avoided each violation." The City of Laredo is charged with knowledge of the laws applicable to municipal water systems, including drinking water standards governing

drinking water quality and reporting requirements for public water systems. Therefore, the City was on notice that “residual disinfectant concentration in the water entering the distribution system shall be at least 0.2 milligram per liter (mg/L) free chlorine or 0.5 mg/L chloramine (measured as total chlorine).” 290 TAC § 290.110(b)(2).

The City could have reasonably anticipated and avoided Violation No. 733814 by issuing a BWN to citizens within 24 hours of first discovering that it was unable to maintain the required TCI residual levels throughout the distribution system and each tank. On September 20, 2019, TCEQ Environmental Investigator, Elsa Hull, contacted the City through its Distribution Superintendent, Tony Mora, to advise that TCI levels must be increased or a BWN must be issued. Between September 21, 2019, the first time TCEQ told the City that an actual BWN was required and September 28, 2019, the date the City eventually issued a BWN, TCEQ collected TCI readings as low as 0.03 mg/L, 0.04 mg/L, and 0.05 mg/L. TCEQ shared this and other data measurements as well as communicated the need for a BWN directly to the City.

Nevertheless, the City failed to issue a BWN, and for seven days the citizens of Laredo were at risk of exposure to harmful pathogens, including bacteria and viruses. This is unacceptable. Both federal and state law specifically provides that public water systems are required to maintain TCI levels of 0.5 mg/L throughout distribution and tanks. Further, the Texas code expressly enumerates four specific scenarios in which a BWN must be issued, which includes 30 TAC § 290.46(q)(5)(A)(iii), requiring a BWN when a public water system is unable to maintain total chlorine residual levels at or above 0.5 mg/L.

This is not the first time that the City has been cited for issues concerning minimum disinfectant residual requirements. During a September 2016 investigation, TCEQ found that the City was in violation of the same 0.5 mg/L requirement, which has been addressed in Enforcement Case No. 53988, Agreed Order Docket No. 2017-0204-PWS-E. Further, TCEQ’s most recent Investigation Report (#1591938) states that “[n]umerous entries on the operator logs indicated chlorine levels in tanks and distribution sites lower than the minimum required level of 0.5 mg/L have been ongoing *since at least May 2019*.” (emphasis added). Therefore, AGUAS! asks: How long have the citizens of Laredo been using and paying for water that is not treated according to non-negotiable state and federal standards?

Emails obtained from a Public Information Act Request to TCEQ show that TCEQ repeatedly informed the City that a BWN was required until acceptable TCI levels were reached and maintained. An email from Arnaldo Lanese, a TCEQ Investigation Supervisor, to Michael Rodgers, the City’s Assistant Utilities Director, on September 27, 2019 at 7:56 AM, attached here as Exhibit A, reads:

“Good Morning Michael, Attached is the spreadsheet with the chlorine levels we obtained 9/26/2019. This is what I mentioned in my voicemail to you yesterday afternoon. Please note the levels remain below the requirement. It continues to be evident that the levels are not being maintained, despite the extensive flushing efforts. *As such, a boil water notice is required.* Please get back to us as soon as possible, preferably by no later than noon today, and let us know if

the City of Laredo will be issuing the notice. Please note that TCEQ is prepared to issue the notice on behalf of the City of Laredo if necessary, but the hope and expectation are that the notice comes from the City of Laredo. . .” (emphasis added)

This email demonstrates that the City understood it was under a legal duty to issue a BWN and forecloses the possibility that the City was merely ignorant of its duties under applicable law. Therefore, AGUAS! is particularly outraged by the City’s November 21, 2019 letter to TCEQ denying any and all liability in connection with Violation No. 733814. The City’s letter claims that no violation occurred because it was “[w]orking with your office to bring the Cl2 residual above the 0.5 mg/l.” Here, the City willfully mistakes the law and facts. Legally and factually speaking, the City was required to issue a BWN pursuant to 30 TAC § 290.46(q)(1), (5) and TCEQ communicated this to City officials multiple times.

b. TCEQ should adjust the penalty amount to reflect a 25% increase based on the City’s culpability.

As paying City of Laredo Utilities customers, we expect the City to comply with all laws and standards governing drinking water quality. Additionally, AGUAS! expects the TCEQ to diligently pursue enforcement actions based on the law, apply regulations clearly and consistently, and ensure timely and just enforcement when laws are violated. The City’s culpability in failing to issue the BWN is clearly established by the aforementioned email communications between the City and TCEQ, the sampling data taken during TCEQ’s investigation, and corresponding regulatory standards. Shockingly, the City continues to maintain that it is innocent in and there is no factual basis for Violation No. 733814. Justice requires that these factors of culpability warrant a 25% increase to the total penalty amount.

II. For seven days, the City of Laredo made little to no good faith effort to return to complete compliance by simply issuing a BWN to consumers as required by law.

TCEQ’s Penalty Policy allows for a penalty reduction when a respondent has demonstrated a good faith effort to “complete compliance with all applicable rules and regulations cited in each violation in the enforcement action.” Here, AGUAS! is not advocating for a reduction in the City’s total base penalty, but rather seeks to embolden TCEQ to increase the final amount after consideration of the City’s continued operation of its public water system and obvious lack of good faith effort to return to complete compliance despite knowledge that it was in violation of state and federal laws governing water quality.

a. Factors to consider relating to the City of Laredo’s lack of good faith effort to comply with state and federal law.

First, the dangerous condition of Laredo’s drinking water violation was not brought to the attention of TCEQ through the City’s own self-reporting of low levels of TCl. Rather, TCEQ became aware of the issue by way of a citizen’s complaint. This complaint triggered TCEQ’s September 2019 investigation of the City, which uncovered severely low levels of TCl residue throughout the water distribution system and storage tanks and ultimately led to the issuance of

the eleven-day BWN. As previously discussed, this investigation also discovered that starting as far back as May 2019, the City affirmatively knew, and had noted in its operator logs, that total chlorine levels were below the required 0.5 mg/L. To further support a general lack of good faith compliance, past Agreed Orders between the City and TCEQ show that the City habitually failed to provide TCEQ with quarterly sampling results and failed to conduct various routine chloramine effectiveness sampling and coliform monitoring. The City's indifference to monitoring water quality as required by law is unacceptable. Without the citizen's complaint, the City would have continued to knowingly and negligently distribute water to consumers in clear violation of the law.

Even in the face of legitimate state agency oversight, the City showed little to no good faith effort to comply with the law. Email communications acquired through our Public Information Act Request show that on more than one occasion, City officials were completely non-responsive to TCEQ statements that a BWN was required. Investigation Report #1591938 states that Elsa Hull requested a copy of chlorine logs from Tony Mora, the City's Distribution Superintendent, on multiple occasions, but "[n]o chlorine logs or de-chlorination verification were received from Mr. Mora during the extent of this investigation." Not only is this another example of the City's lack of good faith effort to comply, it contradicts the City's position that it did not violate the law, because it was working with TCEQ to try and correct residual levels. The City's November 21, 2019 letter to TCEQ provides a post hoc excuse for Tony Mora stating: "[r]egarding request for residuals logs. . . Mr. Mora, clearly did not understand which logs the investigators referred to." If what the City asserts is true, then the citizens of Laredo have an equally egregious, but separate issue on their hands – severely incompetent leadership within the City's Utilities Department.

b. TCEQ should adjust the penalty amount to reflect a 25% increase based on the City's lack of good faith effort to comply.

For seven days, between September 21, 2019 – September 27, 2019, the City made no good faith effort to comply with regulations and failed to issue a BWN despite water sampling data establishing that it was legally required to do so. The City of Laredo is a community surface water system that serves a total of 86,371 total connections and a population of 244,731. By failing to issue the BWN within 24 hours as required by law, the City endangered thousands of individuals by knowingly operating a water distribution system that could potentially contain harmful microorganisms due to inadequate residual disinfectant. This disregard for the law, as well as public health and safety warrants, and justice demands, a 25% increase to the City's penalty amount.

III. TCEQ should make a total upwards adjustment of 50% to the City's penalty amount for Violation No. 733814 based on the City's culpability and lack of good faith effort to comply.

AGUAS! demands that the City of Laredo take seriously the management of its drinking water and ensure that the system comply with federal and state law, which includes issuance of a BWN when required by law. Further, we expect TCEQ, as the state agency charged with regulation of public drinking water and enforcement of the federal requirements under the Safe Drinking Water Act, to take all necessary steps to monitor and alleviate the continuous and reoccurring

issues within the City's water system, in a transparent and verifiable manner. Therefore, pursuant to TCEQ's Penalty Policy, AGUAS! petitions TCEQ to increase the City's base penalty by 50% to account for the City's culpability and lack of good faith effort to comply. This request is supported by clear and persuasive evidence and is well within TCEQ's legal authority.

Clean drinking water has been recognized as a fundamental human right and the citizens of Laredo should be able to expect clean and safe water to pour from their taps. The City's public water system is the only option for water supply and distribution to the citizens of Laredo. The City's public water system must comply with state and federal law. AGUAS! will not hesitate to exercise remedies available to citizen plaintiffs under the Safe Drinking Water Act to obtain compliance with the law.

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.

Kristen Adams
Israel M. Reyna
Enrique Valdivia
Attorneys for Acción de Gente
Unida para Agua Segura! (AGUAS!)

Enclosures: Exhibit (A)

cc: Mr. Jon Niermann, Chairman, TCEQ
Mr. Ken McQueen, Region 6 Administrator, EPA
Ms. Emily Lindley, Commissioner, TCEQ
Mr. Bobby Janecka, Commissioner, TCEQ
Ms. Judith Zaffirini, Texas State Senator, District 21
Mr. Pete Saenz, Mayor of the City of Laredo, Texas
Mr. Rudy Gonzalez, Council Member, District I, City of Laredo, Texas
Mr. Vidal Rodriguez, Council Member, District II, City of Laredo, Texas
Mr. Mercurio Martinez, III, Council Member, District III, City of Laredo, Texas
Mr. Alberto Torres, Jr., Council Member, District IV, City of Laredo, Texas
Ms. Nelly Velma, Council Member, District V, City of Laredo, Texas
Mr. Marte A. Martinez, Council Member, District VI, City of Laredo, Texas
Mr. George J. Altgelt, Council Member, District VII, City of Laredo, Texas
Mr. Roberto Balli, Council Member, District VIII, City of Laredo, Texas

Attachment A

Tano Trevino

From: Arnaldo Lanese
Sent: Friday, September 27, 2019 7:56 AM
To: mrodgers [REDACTED]
Cc: Riazul I. Mia; [REDACTED]; amora [REDACTED] Elsa Hull; Jose Salinas; Wenceslao Barberena; Jaime Garza
Subject: Fwd: timeline of residual readings 9/26/2019
Attachments: COL low chlorine pt. 2.xlsx; ATT00001.htm; City of Laredo Water Treatment Chloramine Disinfection; ATT00002.htm

Good Morning Michael,

Attached is the spreadsheet with the chlorine levels we obtained 9/26/2019. This is what I mentioned in my voicemail to you yesterday afternoon. Please note the levels remain below the requirement. It continues to be evident that the levels are not being maintained, despite the extensive flushing efforts. As such, a boil water notice is required. Please get back to us as soon as possible, preferably by no later than noon today, and let us know if the City of Laredo will be issuing the notice. Please note the TCEQ is prepared to issue the notice on behalf of the City of Laredo if necessary, but the hope and expectation are that the notice comes from the City of Laredo.

I will be available by email this morning if you need anything.

Thank You

Arnold Lanese

Sent from my iPhone
Please Excuse any Typos

Begin forwarded message:

From: Elsa Hull <elsa.hull@tceq.texas.gov>
Date: September 26, 2019 at 3:46:21 PM CDT
To: Arnaldo Lanese <arnaldo.lanese@tceq.texas.gov>
Cc: Jose Salinas <Jose.Salinas@tceq.texas.gov>
Subject: timeline of residual readings 9/26/2019

See attached - also attaching the city's notice regarding a proposed free chlorine burnout.

Elsa Hull
Environmental Investigator
Texas Commission on Environmental Quality R16
707 E. Calton Rd., Suite 304
Laredo, TX 78041
956-791-6611 main
956-753-4051 direct
956-791-6716 fax
Elsa.hull@tceq.texas.gov
<http://www.tceq.texas.gov/customersurvey>

Attachment B

Riazul I. Mia

From: Riazul I. Mia
Sent: Monday, September 23, 2019 10:14 PM
To: Robert A. Eads; Rosario Cabello; Hector F. Gonzalez
Subject: Fwd: low chlorine levels
Attachments: Stubbed Attachments.htm

This message and any files transmitted by this e-mail are intended solely for the individual named.

ATT00001.htm (1 KB)
ATT00002.htm (1 KB)
ATT00003.htm (1 KB)
ATT00004.htm (1 KB)
CCL exit form.doc (1 KB)
image001.png (1 KB)
image006.png (1 KB)
image007.png (1 KB)

Robert/Rosario/Dr. Gonzalez ;

Looks like TCEQ is not backing down from boil water notice requirements. I had talked to Dr. Gonzalez regarding some more Bacteria sample in next couple of days to make sure that the health and safety is not jeopardize. TCEQ still might just go with issuing the boil water notice by themselves but at least I want to make sure that the health and safety of the citizens were never at risk. We will be in violation regarding the regulations. So, my answer to TCEQ is still no to boil water notice unless , we have positive sample. I will keep you posted on this matter. Thanks.

Sent from my iPhone

Begin forwarded message:

From: "Michael F. Rodgers" <mrodgers@ci.laredo.tx.us>
Date: September 23, 2019 at 5:18:02 PM CDT
To: Arnaldo Lanese <arnaldo.lanese@tceq.texas.gov>, "Riazul I. Mia" <rmia@ci.laredo.tx.us>, Tony Moreno <tmoreno@ci.laredo.tx.us>, Antonio Mora III <amora@ci.laredo.tx.us>
Cc: Jose Salinas <Jose.Salinas@tceq.texas.gov>, Elsa Hull <elsa.hull@tceq.texas.gov>
Subject: RE: low chlorine levels

Arnold,

This should have been addressed to Tony Moreno as the Regulated Entity Contact, not Tony Mora. Tony Moreno holds the operator's license for our PWS. It's fine to include via c.c. Tony Mora in the email for notification purposes.

It is my understanding we met the stated requirement of increasing the chlorine residual to of at least 0.5mg/L within 24 hours. **Please be advised that the disinfectant residual must be increased to level of at least 0.5 mg/L within 24 hours or a boil water notice will be required.**

Thanks,

Attachment C

 <https://www.lmtonline.com/local/article/Laredo-utility-director-City-should-have-been-14536476.php>

Laredo utility director: City should have been fined, not made to issue 'scary' boil water notice

By Julia Wallace, LMTonline.com / Laredo Morning Times Published 3:21 pm CDT, Tuesday, October 15, 2019

IMAGE 1 OF 149

City of Laredo Health Department Director Dr. Hector F. Gonzalez and Utilities Director Riazul I. Mia spoke at a special meeting at city council chambers, Wednesday, October 2, 2019, detailing the Boil Water
... more

On Sept. 23, 2016, an investigator with the Texas Commission on Environmental Quality recorded low chlorine levels at seven homes in far north Laredo.

READ MORE: [After 11 days, boil water notice rescinded throughout Laredo by TCEQ](#)

These samples were taken in the San Isidro Southwest, San Isidro Southwest Town Homes, Woodridge Heights, Village Heights and Wyndum Terrace subdivisions; plus one on Mines Road north of the El Pico Water Treatment Plant.

Total chlorine levels in Texas' water systems must remain between 0.5 and 4.0 milligrams per liter in order keep the system free of bacteria, but without over-chlorinating.

Early Vaccines May Not Prevent Infection

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In the areas where these samples were taken, levels ranged from 0.4 to 0.07 milligrams per liter, according to an order by the TCEQ.

However, rather than mandating that the city issue a boil water notice, as they did during a very similar instance in south Laredo three weeks ago, the TCEQ simply fined the city \$1,841, of which they only had to pay about \$1,500.

Riazul Mia, the city's utilities director, said these low chlorine levels were caused by the same problem that has arisen in south Laredo: water lines that end in subdivisions with little surrounding development.

Three years later, the Utilities Department is still monitoring and occasionally flushing the lines in these north Laredo neighborhoods. But more subdivisions are coming in, so the issue is looking better, Mia said.

Because the city was dealt this enforcement action pretty recently, when chlorine levels could not be stabilized in several south Laredo subdivisions last month, the TCEQ had the city issue a boil water notice. Low chlorine levels seemed to be a recurring problem here.

But Mia argues he should have been able to pay a fine to the TCEQ as he had three years ago.

Even when 5% or more of a city's water samples are found to have substandard chlorine for two months straight, the city would not have to issue a boil water notice.

"The law says if you exceed 5% for two consecutive months, you notify the public – not a boil water notice," Mia said.

Boil water notices elicit immediate fear in any community. Mia expected the same response in Laredo, which is why he tried to fight it, he said.

But the TCEQ didn't want to take any chances.

"I mean, that's a very scary notice. We tried. But we have to issue it that way," Mia said.

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If there had been bacteria in the water, he says he would have been the first person to call for a boil water notice. But there was always chlorine in the water, and no bacteria has been detected.

In the five instances where bacteria has been found in Laredo's water this year, retesting has confirmed that the samples were cross-contaminated.

The Utilities Department takes samples outside of people's homes, and there is always opportunity for cross-contamination. If the spout of a faucet hasn't been properly sanitized or if a finger touches the sample, that could affect the reading.

Boil water notices are becoming more and more common in Texas because it's getting tougher and tougher to comply with regulation, Mia said. That's why they always fight with the regulators.

"In a water/sewer system, you always will have violations. This is a dynamic system," he said. "In my previous job, I was an enforcement officer. Every single step you make I can find a violation."

Texas Sen. Judith Zaffirini concedes that boil water notices are occurring more frequently but does not believe the TCEQ is over-regulated.

READ MORE: Zaffirini rebuffs viral video claiming censorship of speech mentioning water boil notice

"Frankly, it's better to be safe than sorry, and for people to be aware of the rules," she said.

However, she does agree that notices issued under precaution, such as Laredo's recent boil water notice, should be more clearly defined.

"Boil water notices do cause a public panic, and we don't want to scare people unnecessarily," Zaffirini said. "So we need to be very judicious when we issue boil water notices."

In this case, the TCEQ documented that the city could not maintain chlorine residuals, which created the opportunity for bacterial contamination. She believes the agency did the right thing to issue the notice.

Laredoans wanted more information, not less, in this situation, and they were justifiably concerned, Zaffirini said. She hopes that there are lessons learned here that can be applied statewide.

Shocking the system

Now Laredo is in the process of a free chlorine burn. This is a stronger, gaseous disinfectant that should clean out any scum or nitrates in the city's water system. Nitrates and nitrites consume monochlorine, which is used year-round to disinfect the water.

Mia said we won't know exactly what was causing the low chlorine levels until the TCEQ's investigation has ended. But now that they have been using free chlorine for almost two weeks, they can see the problem is going away, Mia said.

"That means it's probably due to the nitrate and nitrite in the pipes," he said.

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time this round — 30 days. It's possible that these previous seven-day burns didn't kill everything in the system, Mia said.

Erin Brockovich, an environmental activist made famous by an eponymous movie about her case against PG&E in 1993, wrote about Laredo's free chlorination on her Facebook page last week.

"Just where do you think all of that lingering 'scum' is going? Get ready for toxic levels of chlorine byproducts and other potentially dangerous conditions!" she wrote.

The TCEQ has twice brought enforcement actions against Laredo's water system because total trihalomethanes, or TTHM, were too high in November 2015 through January 2016. These are byproducts that can occur with high chlorine levels.

"Some people who drink water containing trihalomethanes in excess of the (maximum contaminant level) over many years may experience problems with their liver, kidneys or central nervous systems, and may have an increased risk of getting cancer," writes the TCEQ.

Mia maintains that even during this long chlorine burn, Laredo's water is safe to drink. He knows he will not be able to convince everyone, no matter what he says.

"Public perception, we can't change it. We are here to provide clean and safe drinking water — that's what we're doing. If you drink it or not that's up to you. H-E-B and Walmart make a killing off bottled water. That's not because our water is not good," he said.

The TCEQ is expediting its investigation on what caused Laredo's boil water notice, Mia said, and City Council wants to hire an independent investigator as well.

READ MORE: [Hilarious memes dunk on Laredo's boil water situation](#)

Mia says he welcomes these analyses. He knows his employees did not falsify any documents.

"That's one thing I always tell the guys. Just don't fudge the numbers," he said.

Julia Wallace may be reached at 956-728-2543 or jwallace@lmtonline.com

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H E A R S T

Attachment D

Red, bolded violations indicate same or similar to violations in most recent AO (1)						
DOCKET NO.	Date of Order	Reason for Investigation	Date of Violation(s)	Violation(s)	Penalty	Notes
1 2019-1661-PWS-E	Pending	investigation conducted in response to citizen's complaint received by TCEQ on 8/26/2019	9/5/2019 - 10/8/2019	(1) Failed to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment. Specifically, the Lyons south Ground Storage Tank was in poor condition and was leaking in several areas on the wall of the tank. (2) Failed to issue a boil water notice to customers of the Facility within 24 hours of a low disinfectant residual. Specifically, a low disinfectant residual was documented on 9/19/2019. the Executive Director required the City to issue a BWN by 9/21/2019, however the notice was not issued until 9/28/2019.	\$2,724	
2 2017-0204-PWS-E	3/27/18	Unclear; investigation conducted 9/26/16-10/5/16	9/23/16	(1) Failed to prevent cross-connection or interconnection in a filtration plant between a conduit carrying filtered water and another carrying raw water (2) Failed to maintain a minimum disinfectant residual of chloramine (measured as total chlorine) throughout the distribution system (3) Failed to create a nitrification action plan for a system distributing chloraminated water (4) Failed to conduct chloramine effectiveness sampling	\$1,841.00	(*) Amended Schedule for Compliance requested by the City and granted by TCEQ; (*) City requested extensions to comply with six provisions in the Order that had original deadlines of 30 and 90 days after effective date of order - City request to amend scheduling order not sent until Feb. 5 & Feb. 8, 2019
3 2015-1842-PWS-E	8/1/17	selected for TCEQ record review: 11/02/2015 - 11/13/2015	Second and Third quarter of 2015	(1) Failed to comply with MCL for TTHM, based on the locational running annual average (2) Failed to timely provide public notification and submit a copy of the public notification to TCEQ Executive Director re: failure to comply with MCL for TTHM	\$600	
4 2016-0082-PWS-E	9/29/16	TCEQ record review: 12/14/2015 - 1/08/2016	December 2014, January 2015, February 2015; and the 3rd and 4th quarters of 2013	(1) Failed to comply with MCL for TTHM, based on the locational running annual average (2) Failed to timely provide public notification and submit a copy of the public notification to TCEQ Executive Director re: failure to comply with MCL for TTHM (3) Failed to timely provide public notification and submit a copy of the public notification to TCEQ Executive Director re: failure to conduct routine coliform monitoring	\$1,491	

5	2014-0564-PWS-E	9/22/14	TCEQ Record review: 3/31/14 - 4/11/14	4th quarter of 2012; Every quarter in 2013	(1) Failed to comply with the maximum contaminant level (MCL) for TTHM; (2) Failed to provide the results of quarterly sampling to TCEQED	\$585	
6	2008-1807-PWS-E	7/20/09	TCEQ Record review: 9/10/2008	violations discovered at time of review (9/10/08), but 5 were also in violation of April 2007 Agreed Order 2005-1996-MLM-E)	(1) did not provide proper elevated storage capacity or pressure tank capacity for each pressure plane, (2) did not equip all ground storage tanks with overflows that are designed and constructed in accordance with current American Water Works Association ("AWWA") standards; (3) did not provide proper total storage capacity of 222 gallons per connection for each pressure plane (4) did not maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a water tight condition & no compliance documentation had been submitted concerning same to demonstrate upper water treatment facility had been repaired since time of initial investigation (6/11/08)	\$48,747 (+SEP)	(*) 5 findings of fact in this order, were also in violation of April 2007 Agreed Order 2005-1996-MLM-E
7	2007-0441-MLM-E	10/6/08	TCEQ Investigation of PWS Facility on 1/11, 1/18, and 1/19/2007	Violations discovered at time of investigation	(1) failed to conduct an annual inspection, tested by a certified backflow prevention assembly tester, on all backflow prevention assemblies used for health hazard protection; (2) failed to provide the number of connections in the distribution system which is required to determine compliance with requirements of 30 Tex. Admin Code ch. 290; (3) failed to house all gas chlorination and ammonia equipment in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities; (4) failed to provide accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment process used by the system or to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit at least once every 30 days using chlorine solutions of known concentrations; (5) failed to maintain a minimum free chlorine residual or total chlorine throughout the distribution system at all times; (6) failed to maintain all water facilities and related appurtenances in a watertight condition; (7) failed to correctly monitor the turbidity of the combined filter effluent (CFE) and individual filter effluent (IFE); (8) failed to maintain an up-to-date chemical and microbiological monitoring plan.	\$8,030.00 (+ SEP)	

	2005-1996-MLM-E	5/11/07	Record review of PWS facility (10/14/05)	various	<p>(1) failure to provide required elevated storage capacity or pressure storage capacity for 3 pressure planes; (2) failed to provide the required service pump capacity for 2 pressure planes; (3) failed to provide the required total storage capacity for 2 pressure planes; (4) failed to obtain ED approval for in-line booster pumps; (5) failed to maintain the required minimum pressure throughout the distribution system under normal or emergency operating conditions; (6) failed to issue a BWN to customers within 24 hours; (7) failed to ensure the <u>goodworking condition and general appearance of the system's facilities and equipment</u>; (8) failed to provide a flow measuring device to measure the treated water discharged from the plant for a high service pump station; (9) failed to design overflows in strict accordance with current American Water Works Association standards so that the discharge opening of the overflow is above surface and not subject to submergence.</p>	\$45,300 (+SEP)	
8							