

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin E. Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 11, 2023

Via Electronic Filing

The Honorable Linda J. Burgess
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Re: RCH WATER SUPPLY CORPORATION
SOAH Docket No. 582-23-07274
TCEQ Docket No. 2021-0601-PWS-E;
Joint Motion to Waive Appearance at Preliminary Hearing and Submission of Agreed
Hearing Schedule

Dear Judge Burgess:

Enclosed please find the "Joint Motion to Waive Appearance at the Preliminary Hearing and Submission of Agreed Hearing Schedule," regarding the above-referenced case. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Megan L. Grace".

Megan L. Grace, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality
Megan.Grace@tceq.texas.gov

Enclosure

cc: Arthur Rodriguez, Counsel for Respondent
Ecko Beggs, Enforcement Division
Eli Martinez, Office of Public Interest Counsel

SOAH DOCKET NO. 582-23-07274
TCEQ DOCKET NO. 2021-0601-PWS-E

EXECUTIVE DIRECTOR OF THE TEXAS
COMMISSION ON ENVIRONMENTAL
QUALITY,
PETITIONER

VS.

RCH WATER SUPPLY CORPORATION,
RESPONDENT

§
§
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§
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BEFORE THE

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

**JOINT MOTION TO WAIVE APPEARANCE AT THE PRELIMINARY HEARING
AND SUBMISSION OF AGREED HEARING SCHEDULE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE BURGESS:

COME NOW, the Executive Director (“ED”) of the Texas Commission on Environmental Quality (“TCEQ”), by and through a representative of the Litigation Division, and RCH WATER SUPPLY CORPORATION (“Respondent”), represented by Arturo D. Rodriguez, Jr. of the law firm Messer, Ford and McDonald, and file this Joint Motion to Waive Appearance at the Preliminary Hearing and Submission of Agreed Hearing Schedule (“Joint Motion”) in the above-referenced matter. In support of the motion, the parties would show the following:

I.

On December 2, 2021, the Executive Director filed the original Executive Director’s Preliminary Report and Petition against RCH WATER SUPPLY CORPORATION (“EDPRP”), pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and 30 TEX. ADMIN CODE chs. 70 and 290, for alleged violations of 30 TEX. ADMIN. CODE § 290.44(h)(1)(A). Respondent filed a hearing request, which was filed as an Answer to the EDPRP (“Answer”) on February 18, 2022. The above-referenced matter was referred to the State Office of Administrative Hearings on November 7, 2022, and is currently scheduled for a preliminary hearing on January 12, 2023.

II.

The Executive Director and Respondent have consulted and agreed to waive the preliminary hearing and to admit, without objection, the Executive Director’s Exhibits Nos. ED-A through ED-D (included here in “Attachment A”) into the record to establish jurisdiction. Exhibit ED-A is a certified copy of the EDPRP. Exhibit ED-B is a certified copy of Respondent’s Answer to the EDPRP. Exhibit ED-C is a certified copy of the request to refer the matter to SOAH. Exhibit ED-D is a certified copy of the notice of the above referenced preliminary hearing.

In addition, the parties have agreed to the following proposed procedural schedule:

- March 6, 2023** Deadline to issue discovery requests, including requests for disclosure, interrogatories, requests for production and inspection, and requests for admissions
- April 5, 2023** Deadline to issue responses to discovery requests, regardless of when the discovery requests were timely submitted
- June 13 or 29, 2023,** Evidentiary Hearing
or July 12, 2023

Both parties agree with this Joint Motion. Further, Counsel for the ED conferred with the Office of Public Interest Counsel ("OPIC") on this matter, and OPIC does not object to this Joint Motion.

III.

Additionally, the ED and Respondent have agreed to electronic servicing in this case. *See* 30 TEX. ADMIN. CODE § 1.11(c); *see also* Attachment B. The ED respectfully requests that the ALJ issue an Order incorporating the proposed procedural schedule and allowing service by e-mail for all documents.

PRAYER

THEREFORE, the ED and RCH WATER SUPPLY CORPORATION respectfully request that the preliminary hearing be waived, that the ED's Exhibits Nos. ED-A through ED-D be admitted into evidence for the purpose of establishing jurisdiction, that jurisdiction be established, that the proposed procedural schedule be adopted, and that service by e-mail be allowed for all documents.

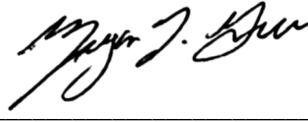
Respectfully submitted,

Texas Commission on Environmental Quality

Erin E. Chancellor
Interim Executive Director

Charmaine Backens, Acting Director
Office of Legal Services

Gitanjali Yadav, Deputy Director
Litigation Division



by _____
Megan L. Grace
State Bar of Texas No. 24126518
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
Megan.Grace@tceq.texas.gov

by Arturo D. Rodriguez, Jr.
Arturo D. Rodriguez, Jr.,
State Bar of Texas No. 00791551
Attorney for RCH WATER SUPPLY CORPORATION
Messer, Fort and McDonald
4201 W. Parmer Lane
Suite C150
Austin, Texas 78727

CERTIFICATE OF SERVICE

I hereby certify that on this 11th of January, 2023, the original of the foregoing "Joint Motion to Waive Appearance at Preliminary Hearing and Submission of Agreed Scheduling Order" ("Motion") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day true and correct copies of the foregoing Motion were sent to the following persons by the method indicated:

Arturo D. Rodriguez, Jr.,
Messer, Fort and McDonald
4201 W. Parmer Lane
Suite C150
Austin, Texas 78727

Via Electronic Mail

The Honorable Linda Burgess
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Via Electronic Filing

Eli Martinez
Office of Public Interest Counsel, MC 103
Texas Commission on Environmental Quality
Eli.Martinez@tceq.texas.gov

Via Electronic Mail



Megan L. Grace, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

CERTIFICATE OF CONFERENCE

Pursuant to 1 TEX. ADMIN. CODE § 155.305, I certify that I conferred with Arturo D. Rodriguez, Jr., attorney for Respondent, about this Joint Motion. Mr. Rodriguez agrees to waive the preliminary hearing and agrees to the proposed hearing schedule, as indicated by his signature above. I further certify that I conferred with Eli Martinez, of the Office of Public Interest Counsel ("OPIC"), about the procedural schedule and this Joint Motion and Mr. Martinez does not object to the procedural schedule or this Joint Motion.



Megan L. Grace, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Attachment A
Executive Director's Exhibits

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



THE STATE OF TEXAS
COUNTY OF TRAVIS
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY
OF A TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DOCUMENT, WHICH IS FILED IN THE PERMANENT RECORDS

JAN 03 2023

OF THE COMMISSION, GIVEN UNDER MY HAND AND THE
SEAL OF OFFICE ON
Laurie Gharis
LAURIE GHARIS, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 2, 2021

Via Certified Mail, Return Receipt Requested

Article Number 7021 0350 0000 4630 5538
Odis Lowe, Registered Agent
RCH WATER SUPPLY CORPORATION
5763 SH 205 South
Rockwall, Texas 75032

Article Number 7021 0350 0000 4630 6351
Jack Pullen, President
RCH WATER SUPPLY CORPORATION
P.O. Box 2034
Rockwall, Texas 75087-4434

Re: RCH WATER SUPPLY CORPORATION; RN102689635;
TCEQ Docket No. 2021-0601-PWS-E

Dear Messrs. Lowe and Pullen:

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") is pursuing an enforcement action against you for violations of state statutes and Commission Rules. Enclosed is a copy of the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of RCH WATER SUPPLY CORPORATION" (the "EDPR"), which was filed today with the Chief Clerk of the TCEQ.

You may employ an attorney. If you or your attorney do not file a written answer with the Chief Clerk of the TCEQ within twenty days after you receive this notice and petition, and/or fail to settle this matter by entering into an Agreed Order, the Commission may issue a default order against you. If a default order is issued, you will be required to pay the assessed penalty and complete any corrective actions recommended by the Executive Director.

YOUR FAILURE TO ACCEPT OR PICK UP CERTIFIED MAIL WILL NOT RELIEVE YOU OF YOUR RESPONSIBILITY IN THIS MATTER.

To request a hearing, send a written hearing request referencing TCEQ Docket No. 2021-0601-PWS-E to the persons listed below via e-mail, regular mail, fax, or e-filing:

Laurie Gharis, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087
(512) 239-3311 (fax)
<https://www.t4.tceq.texas.gov/epic/eFiling/>

P.O. Box 13087 · Austin, Texas 78711-3087 · 512-239-1000 · tceq.texas.gov

How is our customer service? tceq.texas.gov/goto/customersurvey
printed on recycled paper

EXHIBIT
ED - A

00001

and:

Judy Bohr, Staff Attorney
Office of Legal Services, Litigation
Texas Commission on Environmental Quality
P.O. Box 13087, MC 175
Austin, Texas 78711-3087
(512) 239-3434 (fax)
Judy.Bohr@tceq.texas.gov

and:

Garrett Arthur, Staff Attorney
Office of Public Interest Counsel
Texas Commission on Environmental Quality
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-6377 (fax)
garrett.arthur@tceq.texas.gov

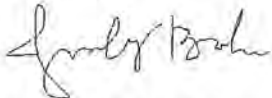
To e-file your hearing request, go to <https://www14.tceq.texas.gov/epic/eFiling/> and follow the on-screen instructions. Hearing requests are due to the Chief Clerk by 5:00 p.m. CST on or before the 20-day deadline date referenced above. Hearing requests filed via e-filing must be in either Microsoft Word or Adobe Acrobat (pdf) format.

All or a portion of the recommended administrative penalty may be offset through the completion of or payment to a Supplemental Environmental Project ("SEP"), which directs all or a portion of your administrative penalty toward projects aimed at improving the environment. For further information on contributing to a SEP, please visit our website at <https://www.tceq.texas.gov/compliance/enforcement/sep>.

For further information concerning the enforcement process, contact the TCEQ Office of Public Interest Counsel at (512) 239-6363. For information concerning compliance assistance, contact the TCEQ Environmental Assistance Division at (800) 447-2827.

If you have any questions or would like to schedule a meeting to discuss settlement, payment plan options, or contribution to a SEP, please contact me at (512) 239-3400 or at my e-mail address listed below. I look forward to cooperatively resolving this matter with you.

Sincerely,



Judy Bohr, Staff Attorney
Office of Legal Services, Litigation
Texas Commission on Environmental Quality
Judy.Bohr@tceq.texas.gov

Enclosure

cc:

Ecko Beggs, Enforcement
Brent Candler, Dallas/Fort Worth Regional Office
Garrett Arthur, TCEQ Office of Public Interest Counsel
Art Rodriguez, Attorney for Respondent, Russell, Rodriguez, Hyde & Bullock, LLP
arodriguez@txlocalgovlaw.com

TCEQ DOCKET NO. 2021-0601-PWS-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION	§	
AGAINST	§	TEXAS COMMISSION ON
RCH WATER SUPPLY CORPORATION;	§	
RN102689635	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S PRELIMINARY REPORT AND PETITION
RECOMMENDING THAT
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENTER AN ENFORCEMENT ORDER ASSESSING AN ADMINISTRATIVE PENALTY AGAINST
AND REQUIRING CERTAIN ACTIONS OF
RCH WATER SUPPLY CORPORATION

INTRODUCTION

1. The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), by and through a representative of the Litigation Division, hereby issues this Preliminary Report and Petition pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and 30 TEX. ADMIN. CODE chs. 70 and 290. Discovery related to this matter is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.
2. RCH WATER SUPPLY CORPORATION ("Respondent") is subject to the enforcement authority of the Commission pursuant to TEX. WATER CODE § 7.002 and TEX. HEALTH & SAFETY CODE § 341.049 because the violations alleged herein are within the Commission's general jurisdiction, pursuant to TEX. WATER CODE § 5.013, as they involve violations of the state's public water supply program.
3. The Executive Director has come to the conclusion that Respondent violated 30 TEX. ADMIN. CODE § 290.44(h)(1)(A). The Executive Director recommends that the Commission enter an order assessing an administrative penalty against Respondent in the amount of three thousand one hundred fifty dollars (\$3,150.00). Further, the Executive Director recommends that the Commission order Respondent to undertake such actions as are necessary to bring operations into compliance with the Texas Health and Safety Code and TCEQ rules.
4. Effective September 1, 2006, the TCEQ does not issue, amend, or renew permits, registrations, certifications, or licenses to an entity or person if any delinquent penalties or delinquent fees are associated with that entity's/person's 9-digit TCEQ Customer Number (CN), regardless of media and/or facility location.

FACTS SUPPORTING VIOLATIONS

5. Respondent owns and operates a public water supply located approximately 0.25 mile south of State Highway 205 on Lofland Circle in Rockwall, Rockwall County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 2,289 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(71).
6. During an investigation conducted on March 12, 2021, an investigator documented that Respondent failed to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or backflow prevention assembly ("BPA"), as identified in 30 TEX. ADMIN. CODE § 290.47(f), in violation of 30 TEX. ADMIN. CODE § 290.44(h)(1)(A). Specifically,

Respondent did not ensure that additional protection was provided at connections served by on-site sewage facilities where irrigation systems were installed.

IMPOSITION OF PENALTY

7. Based on the facts supporting the violations, the Executive Director recommends that an administrative penalty be imposed pursuant to TEX. HEALTH & SAFETY CODE § 341.049. The Commission has the authority to assess an administrative penalty up to \$5,000.00 for each day of each violation under TEX. HEALTH & SAFETY CODE § 341.049.

AMOUNT OF PENALTY

8. In determining the amount of the penalty, the Commission is required by TEX. HEALTH & SAFETY CODE § 341.049 to consider:
 - a. The nature of the circumstances and the extent, duration and gravity of the prohibited acts or omissions;
 - b. With respect to the alleged violator:
 - i. the history and extent of previous violations;
 - ii. 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;
 - iii. the person's demonstrated good faith, including actions taken by the person to correct the cause of the violation;
 - iv. any economic benefit gained through the violation; and
 - v. the amount necessary to deter future violations; and
 - c. Any other matters that justice may require.
9. Based on the facts supporting the violations, and having considered the above-described factors, the Executive Director recommends that Respondent be required to pay an administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00).
10. The penalty calculation worksheet ("PCW") for the recommended administrative penalty is attached hereto and incorporated herein by reference ("Attachment A"). The PCW sets forth each alleged violation and the statutory factors the Executive Director considered in determining the recommended administrative penalty.
11. The Executive Director followed an established Penalty Policy approved by the Commission in calculating the penalty in this enforcement action. *See* Texas Commission on Environmental Quality Penalty Policy (January 28, 2021).

CORRECTIVE ACTION ORDERING PROVISIONS

12. Pursuant to TEX. HEALTH & SAFETY CODE ch. 341, the Commission shall ensure that public drinking water supply systems supply safe drinking water and are technically sound.
13. The Executive Director recommends that Respondent be required to implement the following corrective measures:
 - a. Within 30 days after the effective date of this Order, ensure that a proper BPA or air gap is provided at all locations where an actual or potential contamination hazard exists, including but not limited to a reduced pressure principle backflow

prevention assembly at connections served by on-site sewage facilities where irrigation systems were installed, in accordance with 30 TEX. ADMIN. CODE § 290.44.

- b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 13.a. The certification 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 certification and copies of documentation necessary to demonstrate compliance with these Corrective Action Ordering Provisions to:

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

and:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

RESPONDENT'S RIGHTS AND RESPONSIBILITIES

14. According to TEX. HEALTH & SAFETY CODE § 341.049 and the TCEQ's procedural rules, Respondent has a right to a hearing on the occurrence of the violations, the amount of the proposed penalty, or both. To preserve this right to a hearing, within 20 days after the day Respondent receives this Preliminary Report and Petition, Respondent must submit a written response to the Executive Director in accordance with TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105(a).

PRAYER

15. ACCORDINGLY, the Executive Director respectfully requests that the Commission enter an order, pursuant to TEX. HEALTH & SAFETY CODE ch. 341, assessing a penalty and granting other relief as requested above, together with any other relief the Commission finds appropriate.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker
Executive Director

Erin E. Chancellor, Director
Office of Legal Services

Charmaine K. Backens, Deputy Director
Litigation Division



by _____

Judy Bohr
State Bar of Texas No. 24092153
TCEQ Office of Legal Services
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)
Judv.Bohr@tceq.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2021, the original of the foregoing "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of RCH WATER SUPPLY CORPORATION" ("EDPRP") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing EDPRP was mailed via Certified Mail, Return Receipt Requested, postage prepaid, to:

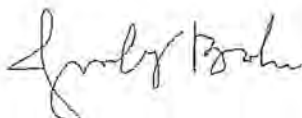
Odis Lowe
5763 SH 205 South
Rockwall, Texas 75032
Article Number 7021 0350 0000 4630 5538

Jack Pullen
P.O. Box 2034
Rockwall, Texas 75087-4434
Article Number 7021 0350 0000 4630 6351

I further certify that on this day a true and correct copy of the foregoing EDPRP was mailed via electronic mail to:

Art Rodriguez
Attorney for Respondent
Russell, Rodriguez, Hyde & Bullock, LLP
arodriguez@txlocalgovlaw.com

I further certify that on this day a true and correct copy of the foregoing EDPRP was electronically delivered to Garrett Arthur, TCEQ Office of Public Interest Counsel, at garrett.arthur@tceq.texas.gov.



Judy Bohr, Staff Attorney
Office of Legal Services, Litigation
Texas Commission on Environmental Quality

**ATTACHMENT A
PENALTY CALCULATION WORKSHEET**



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned 26-Apr-2021	Screening 28-Apr-2021	EPA Due <input type="text"/>
	PCW 1-Sep-2021		

RESPONDENT/FACILITY INFORMATION			
Respondent	RCH WATER SUPPLY CORPORATION		
Reg. Ent. Ref. No.	RN102689635		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	60689	No. of Violations	1
Docket No.	2021-0601-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media	<input type="text"/>	Enf. Coordinator	Ecko Beggs
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	<input type="text" value="\$50"/>	Maximum	<input type="text" value="\$5,000"/>

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	<input type="text" value="\$3,000"/>
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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	5.0% Adjustment	Subtotals 2, 3, & 7	<input type="text" value="\$150"/>
---------------------------	-----------------	--------------------------------	------------------------------------

Notes: Enhancement for one NOV with the same/similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	<input type="text" value="\$0"/>
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	<input type="text" value="\$0"/>
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Economic Benefit	0.0% Enhancement*	Subtotal 6	<input type="text" value="\$0"/>
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Total EB Amounts	<input type="text" value="\$100"/>
Estimated Cost of Compliance	<input type="text" value="\$1,000"/>

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	<input type="text" value="\$3,150"/>
-----------------------------	-----------------------	--------------------------------------

OTHER FACTORS AS JUSTICE MAY REQUIRE	<input type="text" value="0.0%"/>	Adjustment	<input type="text" value="\$0"/>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	<input type="text" value="\$3,150"/>
-----------------------------	--------------------------------------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	<input type="text" value="\$3,150"/>
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DEFERRAL	<input type="text" value="0.0%"/>	Reduction	Adjustment	<input type="text" value="\$0"/>
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	<input type="text" value="\$3,150"/>
------------------------	--------------------------------------

Screening Date 28-Apr-2021

Docket No. 2021-0601-PWS-E

PCW

Respondent RCH WATER SUPPLY CORPORATION

Policy Revision 5 (January 28, 2021)

Case ID No. 60689

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102689635

Media Public Water Supply

Enf. Coordinator Ecko Beggs

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	0	0%
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) 5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with the same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 28-Apr-2021

Docket No. 2021-0601-PWS-E

PCW

Respondent RCH WATER SUPPLY CORPORATION

Policy Revision 5 (January 28, 2021)

Case ID No. 60689

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102689635

Media Public Water Supply

Enf. Coordinator Ecko Beggs

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.44(h)(1)(A)

Violation Description Failed to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or backflow prevention assembly, as identified in 30 Tex. Admin. Code § 290.47(f). Specifically, the Respondent did not ensure that additional protection was provided at connections served by on-site sewage facilities where irrigation systems were installed.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (30.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0.0%).

Matrix Notes Failure to have additional protections may allow backflow and siphonage to occur resulting in persons served by the Facility being exposed to contaminants which would exceed levels protective of human health.

Adjustment \$3,500

\$1,500

Violation Events

Number of Violation Events 2 47 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event) and Count.

Violation Base Penalty \$3,000

Two monthly events are recommended, calculated from the March 12, 2021 record review date to the April 28, 2021 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Table with columns: Effort Type (Extraordinary, Ordinary, N/A) and Status (Before NOE/NOV, NOE/NOV to EDRP/Settlement Offer).

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$95

Violation Final Penalty Total \$3,150

This violation Final Assessed Penalty (adjusted for limits) \$3,150

Economic Benefit Worksheet

Respondent RCH WATER SUPPLY CORPORATION
Case ID No. 60689
Reg. Ent. Reference No. RN102689635
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

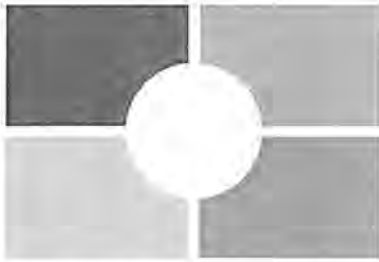
Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
Delayed Costs							
Equipment	\$1,000	20-Aug-2020	2-Dec-2021	1.28	\$4	\$86	\$90
Buildings				0.00	\$0	\$0	\$5
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	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 ensure additional protection is provided in the form of a reduced pressure principle backflow prevention assembly, calculated from the date of the investigation initially documenting the violation to the estimated 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:

Approx. Cost of Compliance \$1,000
TOTAL \$95



**RUSSELL
RODRIGUEZ
HYDE
BULLOCK**

A TEXAS LIMITED LIABILITY PARTNERSHIP

1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
www.txlocalgovlaw.com
Office: 512.930.1317
Fax: 866.929.1641

Partners:

Kerry Russell (retd.)
Arturo D. Rodriguez, Jr.
George E. Hyde
Bradford E. Bullock
Caroline A. Kelley

Senior Associates:

Jonathan W. Needle

Of Counsel:

Karrie H. Marling

February 18, 2022

VIA EFILING

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: TCEQ Enforcement Action
RCH Water Supply Corporation, RN102689635
DOCKET NO. 2021-0601-PWS-E

Dear Ms. Gharis:

In response to the February 8, 2022, letter from Ms. Judy Bohr, I am writing on behalf of the RCH Water Supply Corporation ("RCH"). RCH is still willing to work on an Agreed Order with ED Staff. However, in order to not waive any rights, RCH is requesting a hearing on the allegations asserted against RCH. RCH denies each allegation asserted in the whole and individually and demands strict proof thereof.

If you have any questions or concerns, please contact me at the number provided.

Sincerely,

/s/ Arturo D. Rodriguez, Jr.

Arturo D. Rodriguez, Jr.

cc: Judy Bohr, Staff Attorney
Texas Commission on Environmental Quality
Office of Legal Services
P.O. Box 13087, MC 175
Austin, Texas 78711-3087

Garrett Arthur, Public Interest Counsel
Texas Commission on Environmental Quality
Office of the Public Interest Counsel
P.O. Box 13087, MC 103
Austin, Texas 78711-3087

THE STATE OF TEXAS
COUNTY OF TRAVIS
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY
OF A TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DOCUMENT, WHICH IS FILED IN THE PERMANENT RECORDS

JAN 03 2023

OF THE COMMISSION. GIVEN UNDER MY HAND AND THE
SEAL OF OFFICE ON
Laurie Gharis
LAURIE GHARIS, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXHIBIT

ED - B

00013

JAN 03 2023

OF THE COMMISSION, GIVEN UNDER MY HAND AND THE
SEAL OF OFFICE ON
Laurie Gharis
LAURIE GHARIS, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 7, 2022

via e-filing <https://agme.tceq.texas.gov/epic/eFiling/>

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Attention: Docket Clerk, MC 105
P.O. Box 13087
Austin, Texas 78711-3087

Re: TCEQ Enforcement Action
RCH WATER SUPPLY CORPORATION
Docket No. 2021-0601-PWS-E; RN102689635

Dear Ms. Gharis:

On behalf of the Executive Director, and pursuant to 30 TEX. ADMIN. CODE § 70.109, please consider this letter a request for referral of the above-referenced enforcement action to the State Office of Administrative Hearings ("SOAH"). Accordingly, the Executive Director requests that you file a Request to Docket Case form so that SOAH may acquire jurisdiction to preside over this contested enforcement action.

On December 2, 2021, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of RCH WATER SUPPLY CORPORATION" (the "EDPRP") was filed with the Office of the Chief Clerk. On February 18, 2022, RCH WATER SUPPLY CORPORATION filed an Answer with the Office of the Chief Clerk requesting a hearing. Thus, more than 30 days have passed since an Answer was filed in this matter. The EDPRP serves as the list of issues or areas that must be addressed in the contested case hearing. As such, please file the EDPRP with SOAH and issue to all parties notice of the public hearing pursuant to TEX. GOV'T CODE § 2001.052 and 1 TEX. ADMIN. CODE § 155.401.

Please contact me at (512) 239-3400 with any questions you may have. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Megan L. Grace".

Megan L. Grace, Staff Attorney
Litigation Division
Megan.Grace@tceq.texas.gov

Enclosures

cc: Ecko Beggs, Enforcement Division
Brent Candler, Dallas/Fort Worth Regional Office

EXHIBIT
ED - C

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2022, the original of this letter was filed with the Chief Clerk of the Texas Commission on Environmental Quality, and that true and correct copies of the foregoing were sent to the following persons by the methods of service indicated:

Art Rodriguez
Attorney for RCH WATER SUPPLY CORPORATION
Messer, Fort & McDonald PLLC
4201 W Parmer Lane
Suite C-150
Austin, Texas 78727
Via Certified Mail, Article Number 7021 0350 0000 4630 7457
Via Electronic Mail (pdf version) to art@txmunicipallaw.com

Sheldon Wayne
Office of Public Interest Counsel, MC 103
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Via Electronic Mail (pdf version) to Sheldon.Wayne@tceq.texas.gov



Megan L. Grace, Staff Attorney
Litigation Division, Office of Legal Services
Texas Commission on Environmental Quality

JAN 03 2023

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

OF THE COMMISSION, GIVEN UNDER MY HAND AND THE
SEAL OF OFFICE ON
Laurie Gharis
LAURIE GHARIS, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



STATE OF TEXAS §

COUNTY OF TRAVIS §

I, Laurie Gharis, Chief Clerk of the Texas Commission on Environmental Quality, do hereby certify that the attached mailing list provides the persons to whom the notice of the public hearing for RCH WATER SUPPLY CORPORATION, SOAH Docket No. 582-23-07274, TCEQ Docket No. 2021-0601-PWS-E, was mailed on December 13, 2022. Given under my hand and the seal of the Texas Commission on Environmental Quality, this the 23rd day of December, 2022.

Laurie Gharis

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality

SEAL

EXHIBIT
ED - D

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF PUBLIC HEARING ON ASSESSMENT OF ADMINISTRATIVE PENALTIES AND REQUIRING CERTAIN ACTIONS OF

RCH WATER SUPPLY CORPORATION

SOAH Docket No. 582-23-07274

TCEQ Docket No. 2021-0601-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. – January 12, 2023
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 2, 2021 concerning assessing administrative penalties against and requiring certain actions of RCH WATER SUPPLY CORPORATION, for violations in Rockwall County, Texas, of: 30 Tex. Admin. Code § 290.44(h)(1)(A).

The hearing will allow RCH WATER SUPPLY CORPORATION, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford RCH WATER SUPPLY CORPORATION, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of RCH WATER SUPPLY CORPORATION to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** RCH WATER SUPPLY CORPORATION, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341 and 30 Tex. Admin. Code chs. 70 and 290; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§ 70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

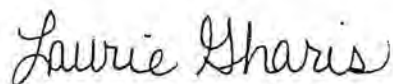
Further information regarding this hearing may be obtained by contacting Megan L. Grace, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Tex. Admin. Code § 155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: December 13, 2022



Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality

TCEQ DOCKET NO. 2021-0601-PWS-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION	§	
AGAINST	§	TEXAS COMMISSION ON
RCH WATER SUPPLY CORPORATION;	§	
RN102689635	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S PRELIMINARY REPORT AND PETITION
RECOMMENDING THAT
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENTER AN ENFORCEMENT ORDER ASSESSING AN ADMINISTRATIVE PENALTY AGAINST
AND REQUIRING CERTAIN ACTIONS OF
RCH WATER SUPPLY CORPORATION

INTRODUCTION

1. The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ"), by and through a representative of the Litigation Division, hereby issues this Preliminary Report and Petition pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and 30 TEX. ADMIN. CODE chs. 70 and 290. Discovery related to this matter is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.
2. RCH WATER SUPPLY CORPORATION ("Respondent") is subject to the enforcement authority of the Commission pursuant to TEX. WATER CODE § 7.002 and TEX. HEALTH & SAFETY CODE § 341.049 because the violations alleged herein are within the Commission's general jurisdiction, pursuant to TEX. WATER CODE § 5.013, as they involve violations of the state's public water supply program.
3. The Executive Director has come to the conclusion that Respondent violated 30 TEX. ADMIN. CODE § 290.44(h)(1)(A). The Executive Director recommends that the Commission enter an order assessing an administrative penalty against Respondent in the amount of three thousand one hundred fifty dollars (\$3,150.00). Further, the Executive Director recommends that the Commission order Respondent to undertake such actions as are necessary to bring operations into compliance with the Texas Health and Safety Code and TCEQ rules.
4. Effective September 1, 2006, the TCEQ does not issue, amend, or renew permits, registrations, certifications, or licenses to an entity or person if any delinquent penalties or delinquent fees are associated with that entity's/person's 9-digit TCEQ Customer Number (CN), regardless of media and/or facility location.

FACTS SUPPORTING VIOLATIONS

5. Respondent owns and operates a public water supply located approximately 0.25 mile south of State Highway 205 on Lofland Circle in Rockwall, Rockwall County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 2,289 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(71).
6. During an investigation conducted on March 12, 2021, an investigator documented that Respondent failed to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or backflow prevention assembly ("BPA"), as identified in 30 TEX. ADMIN. CODE § 290.47(f), in violation of 30 TEX. ADMIN. CODE § 290.44(h)(1)(A). Specifically,

Respondent did not ensure that additional protection was provided at connections served by on-site sewage facilities where irrigation systems were installed.

IMPOSITION OF PENALTY

7. Based on the facts supporting the violations, the Executive Director recommends that an administrative penalty be imposed pursuant to TEX. HEALTH & SAFETY CODE § 341.049. The Commission has the authority to assess an administrative penalty up to \$5,000.00 for each day of each violation under TEX. HEALTH & SAFETY CODE § 341.049.

AMOUNT OF PENALTY

8. In determining the amount of the penalty, the Commission is required by TEX. HEALTH & SAFETY CODE § 341.049 to consider:
 - a. The nature of the circumstances and the extent, duration and gravity of the prohibited acts or omissions;
 - b. With respect to the alleged violator:
 - i. the history and extent of previous violations;
 - ii. 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;
 - iii. the person's demonstrated good faith, including actions taken by the person to correct the cause of the violation;
 - iv. any economic benefit gained through the violation; and
 - v. the amount necessary to deter future violations; and
 - c. Any other matters that justice may require.
9. Based on the facts supporting the violations, and having considered the above-described factors, the Executive Director recommends that Respondent be required to pay an administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00).
10. The penalty calculation worksheet ("PCW") for the recommended administrative penalty is attached hereto and incorporated herein by reference ("Attachment A"). The PCW sets forth each alleged violation and the statutory factors the Executive Director considered in determining the recommended administrative penalty.
11. The Executive Director followed an established Penalty Policy approved by the Commission in calculating the penalty in this enforcement action. *See* Texas Commission on Environmental Quality Penalty Policy (January 28, 2021).

CORRECTIVE ACTION ORDERING PROVISIONS

12. Pursuant to TEX. HEALTH & SAFETY CODE ch. 341, the Commission shall ensure that public drinking water supply systems supply safe drinking water and are technically sound.
13. The Executive Director recommends that Respondent be required to implement the following corrective measures:
 - a. Within 30 days after the effective date of this Order, ensure that a proper BPA or air gap is provided at all locations where an actual or potential contamination hazard exists, including but not limited to a reduced pressure principle backflow

prevention assembly at connections served by on-site sewage facilities where irrigation systems were installed, in accordance with 30 TEX. ADMIN. CODE § 290.44.

- b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 13.a. The certification 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 certification and copies of documentation necessary to demonstrate compliance with these Corrective Action Ordering Provisions to:

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

and:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

RESPONDENT'S RIGHTS AND RESPONSIBILITIES

14. According to TEX. HEALTH & SAFETY CODE § 341.049 and the TCEQ's procedural rules, Respondent has a right to a hearing on the occurrence of the violations, the amount of the proposed penalty, or both. To preserve this right to a hearing, within 20 days after the day Respondent receives this Preliminary Report and Petition, Respondent must submit a written response to the Executive Director in accordance with TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105(a).

PRAYER

15. ACCORDINGLY, the Executive Director respectfully requests that the Commission enter an order, pursuant to TEX. HEALTH & SAFETY CODE ch. 341, assessing a penalty and granting other relief as requested above, together with any other relief the Commission finds appropriate.

Respectfully submitted,

Texas Commission on Environmental Quality

Toby Baker
Executive Director

Erin E. Chancellor, Director
Office of Legal Services

Charmaine K. Backens, Deputy Director
Litigation Division



by _____
Judy Bohr
State Bar of Texas No. 24092153
TCEQ Office of Legal Services
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)
Judv.Bohr@tceq.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2021, the original of the foregoing "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of RCH WATER SUPPLY CORPORATION" ("EDPRP") was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day a true and correct copy of the foregoing EDPRP was mailed via Certified Mail, Return Receipt Requested, postage prepaid, to:

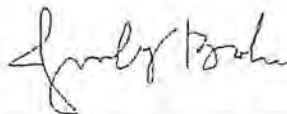
Odis Lowe
5763 SH 205 South
Rockwall, Texas 75032
Article Number 7021 0350 0000 4630 5538

Jack Pullen
P.O. Box 2034
Rockwall, Texas 75087-4434
Article Number 7021 0350 0000 4630 6351

I further certify that on this day a true and correct copy of the foregoing EDPRP was mailed via electronic mail to:

Art Rodriguez
Attorney for Respondent
Russell, Rodriguez, Hyde & Bullock, LLP
arodriguez@txlocalgovlaw.com

I further certify that on this day a true and correct copy of the foregoing EDPRP was electronically delivered to Garrett Arthur, TCEQ Office of Public Interest Counsel, at garrett.arthur@tceq.texas.gov.



Judy Bohr, Staff Attorney
Office of Legal Services, Litigation
Texas Commission on Environmental Quality

ATTACHMENT A
PENALTY CALCULATION WORKSHEET



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	26-Apr-2021	Screening	28-Apr-2021	EPA Due	
	PCW	1-Sep-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	RCH WATER SUPPLY CORPORATION
Reg. Ent. Ref. No.	RN102689635
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	60689	No. of Violations	1
Docket No.	2021-0601-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Ecko Beggs
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5.0% Adjustment **Subtotals 2, 3, & 7**

Notes

Culpability 0.0% Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit 0.0% Enhancement* **Subtotal 6**

Total EB Amounts	\$100
Estimated Cost of Compliance	\$1,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes

PAYABLE PENALTY

Screening Date 28-Apr-2021

Docket No. 2021-0601-PWS-E

PCW

Respondent RCH WATER SUPPLY CORPORATION

Policy Revision 5 (January 28, 2021)

Case ID No. 60689

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102689635

Media Public Water Supply

Enf. Coordinator Ecko Beggs

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	0	0%
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) 5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with the same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 28-Apr-2021

Docket No. 2021-0601-PWS-E

PCW

Respondent RCH WATER SUPPLY CORPORATION

Policy Revision 5 (January 28, 2021)

Case ID No. 60689

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN102689635

Media Public Water Supply

Enf. Coordinator Ecko Beggs

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.44(h)(1)(A)

Violation Description

Failed to ensure additional protection was provided at all residences or establishments where an actual or potential contamination hazard exists in the form of an air gap or backflow prevention assembly, as identified in 30 Tex. Admin. Code § 290.47(f). Specifically, the Respondent did not ensure that additional protection was provided at connections served by on-site sewage facilities where irrigation systems were installed.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				30.0%
	Potential	X			

>> Programmatic Matrix

	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0.0%

Matrix Notes

Failure to have additional protections may allow backflow and siphonage to occur resulting in persons served by the Facility being exposed to contaminants which would exceed levels protective of human health.

Adjustment \$3,500

\$1,500

Violation Events

Number of Violation Events 2 Number of violation days 47

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,000

Two monthly events are recommended, calculated from the March 12, 2021 record review date to the April 28, 2021 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$95

Violation Final Penalty Total \$3,150

This violation Final Assessed Penalty (adjusted for limits) \$3,150

Economic Benefit Worksheet

Respondent RCH WATER SUPPLY CORPORATION

Case ID No. 60689

Reg. Ent. Reference No. RN102689635

Media Public Water Supply

Violation No. 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	\$1,000	20-Aug-2020	2-Dec-2021	1.28	\$4	\$86	\$90
Buildings				0.00	\$0	\$0	\$5
Other (as needed)				0.00	\$0	\$0	\$0
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 ensure additional protection is provided in the form of a reduced pressure principle backflow prevention assembly, calculated from the date of the investigation initially documenting the violation to the estimated 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

Approx. Cost of Compliance

\$1,000

TOTAL

\$95

MAILING LIST

**RCH WATER SUPPLY CORPORATION
SOAH Docket No. 582-23-07274
TCEQ Docket No. 2021-0601-PWS-E**

Respondent

Via Certified and First Class Mail

Odis Lowe, Registered Agent
RCH WATER SUPPLY CORPORATION
5763 State Highway 205 South
Rockwall, Texas 75032

Jack Pullen, President
RCH WATER SUPPLY CORPORATION
P.O. Box 2034
Rockwall, Texas 75087

Respondent's Representative

Via Certified and First Class Mail

Art Rodriguez
Attorney for RCH WATER SUPPLY CORPORATION
Messer, Fort & McDonald PLLC
4201 West Parmer Lane, Suite C-150
Austin, Texas 78727

Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

Via electronic mail:

Megan L. Grace, Staff Attorney, Litigation Division (Mail Code 175)
Ecko Beggs, Enforcement Coordinator, Enforcement Division (Mail Code 219)
Sheldon Wayne, Staff Attorney, Office of Public Interest Counsel (Mail Code 103)

7021 0350 0000 4953 3976

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Postage

Total Postage and Fees

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City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

RCHWSC
ODIS LOWE
2021-0601-PWS-E
1990012, 60689
123580

1. Article Addressed to:

ODIS LOWE REGISTERED AGENT
RCH WSC
5763 S STATE HIGHWAY 205
ROCKWALL TX 75032-2632

2. Article Number (Transfer from service label)
7021 0350 0000 4953 3976

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [Signature] Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
if YES, enter delivery address below: No

3. Service Type
 Adult Signature
 Adult Signature Restricted Delivery
 Certified Mail®
 Certified Mail Restricted Delivery
 Collect on Delivery
 Collect on Delivery Restricted Delivery
 Priority Mail Express®
 Registered Mail™
 Registered Mail Restricted Delivery
 Signature Confirmation™
 Signature Confirmation Restricted Delivery

Domestic Return Receipt

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<input type="checkbox"/> Ext <input type="checkbox"/> Post	ART RODRIGUEZ ATTORNEY FOR RCH WSC MESSER FORT & MCDONALD PLLC 4201 W PARMER LN STE C150 AUSTIN TX 78727
Total Postage and Fees	
Sent To	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

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Certified Mail Fee \$ _____

Extra Services & Fees (check box and fee):

Return R

Return C

Certified

Adult St

Adult Sh

MR JACK PULLEN PRESIDENT
RCH WSC
PO BOX 2034
ROCKWALL TX 75087-4434

Postage \$ _____

Total Postage \$ _____

Sent to _____

Street and Apt. No., or PO Box No. _____

City, State, ZIP+4® _____

PS Form 3800, April 2015 PSN 7530-02-000-2047 See Reverse for Instructions

RCH WSC
MR JACK PULLEN
2021-0601-PWS-E
1990012, 60689
123580

1. Article Addressed to:

MR JACK PULLEN PRESIDENT
RCH WSC
PO BOX 2034
ROCKWALL TX 75087-4434

2. Article Number (Transfer from service label)

7021 0350 0000 4953 3938

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Signature]* Agent Addressee

B. Received by (Printed Name) *Ten Hout* C. Date of Delivery *12/19/26*

D. Is delivery address different from item? Yes No
If YES, enter delivery address below:

OFFICE 9:57

3. Service Type

Adult Signature Priority Mail Express®

Adult Signature Restricted Delivery Registered Mail™

Certified Mail® Registered Mail Restricted Delivery

Certified Mail Restricted Delivery Signature Confirmation™

Collect on Delivery Signature Confirmation Restricted Delivery

Collect on Delivery Restricted Delivery Signature Confirmation Restricted Delivery

all Restricted Delivery

Attachment B
E-mail on E-serving

From: [Art Rodriguez](#)
To: [Megan Grace](#)
Subject: Re: RCH - PH Date
Date: Tuesday, January 10, 2023 10:46:49 AM
Attachments: [image001.png](#)

1. Agree to electronic service.
2. I do not have an issue with the schedule, but would ask if we could push the HOM to the week of Aug 21 or Sept 4. I am trying to schedule around some uncertainty with my daughter's college moves.
3. Thank you.

Please note my new contact information:

Arturo D. 'Art' Rodriguez Jr.
Partner



4201 W. Parmer Ln • Ste. C-150 • Austin, TX 78727 • Phone: 512.600.2308 • 512.930.1317
Fax: 972.668.6414 • Toll Free: 855.668.6400
art@txmunicipallaw.com • www.txmunicipallaw.com

From: Megan Grace <Megan.Grace@tceq.texas.gov>
Date: Tuesday, January 10, 2023 at 9:18 AM
To: Art Rodriguez <art@txmunicipallaw.com>
Subject: RE: RCH - PH Date

Good morning,

Please let me know if you have conflicts or issues with the following proposed procedural schedule:

March 6, 2023: Deadline to serve discovery requests
April 5, 2023: deadline to respond to discovery requests
June 13 or 29, or July 12, 2023: proposed dates for evidentiary hearing

In addition, let me know if you agree to allow electronic servicing in this case. If so, I can add a reference to that in the joint motion to waive the preliminary hearing.

Best,
Megan

Megan L. Grace
Staff Attorney, Litigation Division
TCEQ, Office of Legal Services
(512) 239-3334
Megan.Grace@tceq.texas.gov
