

**NO. D-1-GN-22-005183**

<b>STATE OF TEXAS,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>TRAVIS COUNTY, TEXAS</b>
	§	
<b>CITY OF TOYAH,</b>	§	
	§	
<b>Defendant.</b>	§	<b>459TH JUDICIAL DISTRICT</b>

**STATE OF TEXAS’S FIRST AMENDED PETITION AND APPLICATION FOR  
INJUNCTIVE RELIEF AND APPOINTMENT OF RECEIVER**

The State of Texas, by and through its Attorney General, on behalf of the people of Texas and the Texas Commission on Environmental Quality (“TCEQ”), files this First Amended Petition and Application for Injunctive Relief and Appointment of Receiver and seeks injunctive relief, civil penalties, and recovery of attorney’s fees for violations of state drinking water regulations at Defendant’s public drinking water system located in Reeves County, Texas. Additionally, this Petition seeks the appointment of a receiver at Defendant’s public water system. In support, the State shows the following:

**I. DISCOVERY**

**1.1** The State will conduct discovery under a Level 2 Discovery Control Plan pursuant to Tex. R. Civ. P. 190.3.

**1.2** This case is not subject to the restrictions of expedited actions process in Tex. R. Civ. P. 169 because the State of Texas seeks non-monetary relief.

**1.3** Pursuant to Tex. R. Civ. P. 47(c), the State of Texas seeks monetary relief of \$250,000 or less, non-monetary relief, and all other relief to which it is entitled.

## II. PARTIES

**2.1** Plaintiff, the State of Texas (“State”), is authorized to bring this suit through its Attorney General at the request of TCEQ pursuant to Tex. Health & Safety Code § 341.048 and Tex. Water Code §§ 7.105, 13.412. The State is not required to pay a filing fee or other security for costs and is not required to pay a bond to the Court granting an injunction under Tex. Civ. Prac. & Rem. Code § 6.001 and Tex. Health & Safety Code § 341.048(g).

**2.2** Defendant, the City of Toyah (“Toyah”), is a municipality in Reeves County, Texas. It has been properly served with process and has appeared in this cause through counsel.

## III. JURISDICTION AND VENUE

**3.1** This Court has jurisdiction over the case pursuant to Tex. Health & Safety Code § 341.048(c), Tex. Water Code §§ 7.032, 7.105(a), 13.412, and Tex. Gov’t Code § 2001.202(a).

**3.2** Venue for this suit is proper in Travis County pursuant to Tex. Health & Safety Code § 341.048(f) and Tex. Water Code §§ 7.105(c), 13.419.

## IV. NATURE OF SUIT AND AUTHORITY

**4.1** This suit is a civil enforcement proceeding under the Texas Health and Safety Code Chapter 341 and related regulations. This case involves a public water system (“PWS”) operated by the City of Toyah in Reeves County, Texas. The PWS services the small community of Toyah, Texas, and is responsible for providing its customers with a safe and suitable drinking water supply. Toyah failed to adequately provide this service, and

subsequently placed the health and safety of its customers in danger. The State seeks injunctive relief, civil penalties, attorney's fees, court costs, and an appointment of a receiver.

### **Public Water System Enforcement Authority**

**4.2** TCEQ regulates drinking water under Chapter 341 of the Texas Health and Safety Code ("Chapter 341") and through rules in Title 30, Chapter 290 of the Texas Administrative Code ("Texas Drinking Water Rules"). Under the Texas Drinking Water Rules, "Drinking Water" is "[a]ll water distributed by any agency or individuals, public or private, for the purpose of human consumption." 30 Tex. Admin. Code § 290.38(23). Chapter 341 prohibits the distribution of unsanitary drinking water and creates a framework for TCEQ to regulate the distribution of drinking water. Tex. Health & Safety Code §§ 341.031–.050.

**4.3** Chapter 341 empowers TCEQ with the authority to ensure that public drinking water supply systems: (1) supply safe drinking water in adequate quantities; (2) are financially stable; and (3) are technically sound. Tex. Health & Safety Code § 341.0315(a). Each PWS must provide an "adequate and safe drinking water supply" and must meet requirements in TCEQ's rules. *Id.* § 341.0315(c).

**4.4** A public water system is a system that provides public water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. A PWS must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. 30 Tex. Admin. Code § 290.38(71). A community water system is a PWS which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis. *Id.* § 290.38(15).

4.5 The Texas Public Drinking Water Rules specifically applicable and relevant to this matter are as follows:

1. **Surface Water.** All plant piping shall be constructed as to be thoroughly tight against leakage. No cross-contamination or interconnection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment. 30 Tex. Admin. Code § 290.42(d)(2).
2. **Permits for Waste Discharges.** Any discharge of wastewater and other plant wastes shall be in accordance with all applicable state and federal statutes and regulations. Permits for discharging wastes from water treatment processes shall be obtained from the commission, if necessary. 30 Tex. Admin. Code § 290.42(i).
3. **Unauthorized Discharges Prohibited.** Except as authorized by the commission, no person may: discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state. Tex. Water Code § 26.121.
4. **Plumbing Ordinance.** Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted (*see* § 290.47(b) of this title (relating to Appendices)). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe. 30 Tex. Admin. Code § 290.46(i).
5. **Monitoring Plan.** All public water systems shall maintain an up-to-date chemical and microbiological monitoring plan. Monitoring plans are subject to the review and approval of the executive director. A copy of the monitoring plan must be maintained at each water treatment plant and at a central location. 30 Tex. Admin. Code § 290.121(a).
6. **Engineering Plans and Maps.** Plans, specifications, maps, and other pertinent information shall be maintained to facilitate the operation and maintenance of the system's facilities and equipment. The following records shall be maintained on file at the public water system and be available to the executive

director upon request: An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies. 30 Tex. Admin. Code § 290.46(n)(2).

7. **Drought Contingency Plan.** A retail public water supplier must possess a drought contingency plan to be implemented in times of drought. 30 Tex. Admin. Code § 288.20(a).
8. **Operating Records and Reports, Generally.** All public water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports. All public water systems shall maintain a record of operations, including the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation, and the dates that dead-end mains were flushed. 30 Tex. Admin. Code § 290.46(f)(3)(A)(iii), (iv).
9. **Maintenance and Housekeeping.** The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facilities and equipment. The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water. Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service. Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition. 30 Tex. Admin. Code § 290.46(m)(1)(A).
10. **Flushing of Mains.** All dead-end mains must be flushed at monthly intervals. The dates of these dead-end main flushes must be recorded. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels. 30 Tex. Admin. Code § 290.46(f)(3)(A)(iv), (l).
11. **Customer Service Inspections.** A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in commission Form 20699 must be approved by the executive director prior to being placed in use. 30 Tex. Admin. Code § 290.46(j).

12. **Changes in Existing Systems or Supplies.** Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Significant changes in existing systems or supplies shall not be instituted without the prior approval of the executive director. 30 Tex. Admin. Code § 290.39(j).
13. **Distribution System Compliance Monitoring.** All public water systems shall monitor the disinfectant residual at various locations throughout the distribution system. Public water systems using surface water sources or groundwater under the direct influence of surface water must monitor the disinfectant residual tests at least once per day at representative locations in the distribution system. 30 Tex. Admin. § 290.110(c)(4)(C).
14. **Plant Operations Manual.** A thorough plant operations manual must be compiled and kept up-to-date for operator review and reference. This manual should be of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency. If operating a reverse osmosis or nanofiltration membrane system, the manual must also include the system's configuration, baseline performance data, and any set point for membrane cleaning or replacement. 30 Tex. Admin. Code § 290.42(1).
15. **Disinfection.** Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be secured under all conditions. Systems that use chlorine gas must ensure that the risks associated with its use are limited as follows. When chlorine gas is used, a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration (OSHA) standards for construction and operation, and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage shall be readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency. 30 Tex. Admin. Code § 290.42(e)(4)(A).
16. **Disinfection, Continued.** Adequate ventilation, which includes both high level and floor level screened vents, shall be provided for all enclosures in which gas chlorine is being stored or fed. Enclosures containing more than one operating 150-pound cylinder of chlorine shall also provide forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and

treatment as prescribed by the current International Fire Code (IFC). 30 Tex. Admin. Code § 290.42(e)(4)(C).

17. **Surface Water.** Flow-measuring devices shall be provided to measure the raw water supplied to the plant, the recycled decant water, the treated water used to backwash the filters, and the treated water discharged from the plant. Additional metering devices shall be provided as appropriate to monitor the flow rate through specific treatment processes. Metering devices shall be located to facilitate use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities. 30 Tex. Admin. Code § 290.42(d)(5).
18. **Testing equipment.** Accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment or pathogen inactivation or removal processes must be used by the system. Laboratory equipment used for compliance testing shall be properly calibrated. Turbidimeters shall be properly calibrated. On-line turbidimeters shall be calibrated with primary standards at least once every 90 days. 30 Tex. Admin. Code § 290.46(s)(2)(B)(iii).
19. **Sanitary Facilities for Water Works Installations.** Toilet and hand washing facilities provided in accordance with established standards of good public health engineering practices shall be available at all installations requiring frequent visits by operating personnel. 30 Tex. Admin. Code § 290.42(h).
20. **Security, Generally.** Each water treatment plant and all appurtenances thereof shall be enclosed by an intruder-resistant fence. The gates shall be locked during periods of darkness and when the plant is unattended. A locked building in the fence line may satisfy this requirement or serve as a gate. 30 Tex. Admin. Code § 290.42(m).
21. **Facility Security.** All potable water storage tanks and pressure maintenance facilities must be installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates. Pedestal-type elevated storage tanks with lockable doors and without external ladders are exempt from this requirement. The gates and doors must be kept locked whenever the facility is unattended. 30 Tex. Admin. Code § 290.43(e).
22. **Surface Water Data.** Each surface water treatment plant shall be provided with a computer and software for recording performance data, maintaining records, and submitting reports to the executive director. The executive director may allow a water system to locate the computer at a site other than the water treatment plant only if performance data can be reliably transmitted to the remote location on a real-time basis, the plant operator has access to the computer at all times, and performance data is readily accessible to agency staff

during routine and special investigations. 30 Tex. Admin. Code § 290.42(d)(16).

23. **Retaining Records.** The following records shall be retained for at least two years: the amount of chemicals used, and the volume of water treated and distributed. Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of chemical used and the amount of water treated and distributed each day. 30 Tex. Admin. Code § 290.46(f)(3)(A)(i)(I), (ii)(I).
24. **Vacuum Breakers.** All plant piping shall be constructed so as to be thoroughly tight against leakage. No cross-connection or interconnection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment. Vacuum breakers must be provided on each hose bibb within the plant facility. 30 Tex. Admin. Code § 290.42(d)(2)(A).
25. **Water Treatment Plant Chemical Storage and Feed Facilities.** Chemical storage facilities shall be designed to ensure a reliable supply of chemicals to the feeders, minimize the possibility and impact of accidental spills, and facilitate good housekeeping. Dry chemicals shall be stored off the floor in a dry room that is located above ground and protected against flooding or wetting from floors, walls, and ceilings. 30 Tex. Admin. Code § 290.42(f)(1)(D).
26. **Electrical Wiring.** All water system electrical wiring must be securely installed in compliance with a local or national electrical code. 30 Tex. Admin. Code § 290.46(v).
27. **Accessibility of Operating Records.** The public water system's operating records must be accessible for review during inspections and be available to the executive director upon request. 30 Tex. Admin. Code § 290.46(f)(2).
28. **Measuring Disinfectant.** Facilities shall be provided for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use. 30 Tex. Admin. Code § 290.42(e)(3)(D).
29. **Pipe Gallery Access, Drainage, and Ventilation.** Pipe galleries shall provide ample working room, good lighting, and good drainage provided by sloping floors, gutters, and sumps. Adequate ventilation to prevent condensation and to provide humidity control is also required. 30 Tex. Admin. Code § 290.42(d)(12).
30. **Maintenance and Housekeeping of Facility Grounds.** The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way



as to prevent other conditions that might cause the contamination of the water. 30 Tex. Admin. Code § 290.46(m).

31. **Design and Construction of Clearwells, Standpipes, Ground Storage Tanks, and Elevated Tanks.** All clearwells and water storage tanks shall have a liquid level indicator located at the tank site. The indicator can be a float with a moving target, an ultrasonic level indicator, or a pressure gauge calibrated in feet of water. If an elevated tank or standpipe has a float with moving target indicator, it must also have a pressure indicator located at ground level. Pressure gauges must not be less than three inches in diameter and calibrated at not more than two-foot intervals. Remote reading gauges at the owner's treatment plant or pumping station will not eliminate the requirement for a gauge at the tank site unless the tank is located at the plant or station. 30 Tex. Admin. Code § 290.43(c)(4).
32. **System Ownership.** All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted. 30 Tex. Admin. Code § 290.46(t).
33. **Labeling.** The identification of influent, effluent, waste backwash, and chemical feed lines shall be accomplished by the use of labels or various colors of paint. Where labels are used, they shall be placed along the pipe at no greater than five-foot intervals. Color coding must be by solid color or banding. If bands are used, they shall be placed along the pipe at no greater than five-foot intervals. Tex. Admin. Code § 290.42(d)(13).
34. **Bulk Storage.** Bulk storage facilities at the plant shall be adequate to store at least a 15-day supply of all chemicals needed to comply with minimum treatment technique and maximum contaminant level ("MCL") requirements. The capacity of these bulk storage facilities shall be based on the design capacity of the treatment plant. However, the executive director may require a larger stock of chemicals based on local resupply ability. 30 Tex. Admin. Code § 290.42(f)(1)(A).
35. **Bulk Storage Labeling.** Every chemical bulk storage facility and day tank shall have a label that identifies the facility's or tank's contents and a device that indicates the amount of chemical remaining in the facility or tank. 30 Tex. Admin. Code § 290.42(f)(1)(C).
36. **Containment Facilities.** Containment facilities for a single container or for multiple interconnected containers must be large enough to hold the maximum amount of chemical that can be stored with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less. 30 Tex. Admin. Code § 290.42(f)(1)(E)(ii)(I).

37. **Care of Treatment and Maintenance Facilities.** All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids. 30 Tex. Admin. Code § 290.46(m)(4).
38. **Operation by Trained and Licensed Personnel.** The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director. Except as provided in the rules, all public water systems must use a water works operator who holds an applicable, valid license issued by the executive director to meet the requirements of this subsection. The licensed operator of a public water system may be an employee, contractor, or volunteer. 30 Tex. Admin. Code § 290.46(e).
39. **Disinfectant Residual Concentration (Chlorine).** For the purpose of microbiological control and protection public water systems shall properly disinfect water before it is distributed to any customer and maintain a residual disinfectant concentration in the water within the distribution system of at least 0.2 mg/L free chlorine or 0.5 mg/L chloramine (measured as total chlorine). 30 Tex. Admin. Code § 290.110(b)(4).
40. **Compliance Determination for TTHM and HAA5.** A public water system violates the MCL for trihalomethane (“TTHM”) if any locational running annual average for TTHM exceeds an MCL specified in 30 Tex. Admin. Code § 290.115(b)(1)(A). A public water system violates the MCL for haloacetic acids (group of five) (“HAA5”) if any locational running annual average for HAA5 exceeds the MCL specified in 30 Tex. Admin. Code § 290.115(b)(1)(B). 30 Tex. Admin. Code § 290.115(f)(1).
41. **Reporting Requirements for TTHM and HAA5.** A system that exceeds operational evaluation levels described in 30 Tex. Admin. Code § 290.115(b)(2) must conduct an operation evaluation and submit a written operation evaluation report that meets the requirements listed in 30 Tex. Admin. Code § 290.115(e)(2)(A)–(D). 30 Tex. Admin. Code § 290.115(e)(2).
42. **Tier 2 Public Notices.** The initial Tier 2 public notice for any violation, situation, or significant deficiency identified in 30 Tex. Admin. Code § 290.122(b) must be issued as soon as possible, but in no case later than 30 days after the violation is identified. The owner or operator of a community water system shall issue the notice by: (i) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and (ii) any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally

be reached by the notice required in clause (i). 30 Tex. Admin. Code § 290.122(b)(2)(A)(i), (ii).

43. **Proof of Public Notification.** A copy of any public notice required under 30 Tex. Admin. Code § 290.122 must be submitted to the executive director within ten days of its distribution as proof of public notification. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or other method of submission as specified by the executive director. Each proof of public notification must be accompanied with a signed Certificate of Delivery. 30 Tex. Admin. Code § 290.122(f).
44. **Reduced Three-Year Tap Sampling for Lead and Copper.** Systems shall collect tap samples every three years. Systems on reduced three-year monitoring shall collect tap samples at the reduced number of sites in the table entitled "Required Number of Lead and Copper Tap Sample Sites" under 30 Tex. Admin. Code § 290.117. Systems shall collect samples at the sites approved by the executive director and documented in the monitoring plan. Reduced three-year monitoring shall be performed during June, July, August, or September, unless the executive director has designated a different four-month period under 30 Tex. Admin. Code § 290.117. 30 Tex. Admin. Code § 290.117(c)(2)(C).
45. **Lead and Copper Tap Sample Collection Method.** A first draw tap sample means a one liter or one quart sample of tap water collected from a cold water, frequently used interior tap, after the water has been standing in the plumbing for at least six hours without first flushing the tap. The kitchen cold water faucet is the preferred sampling tap at residential sites. It is recommended that the water not be allowed to stand in the plumbing for more than 18 hours prior to a sample collection. A sample collection may be conducted by either water system personnel or the residents. If the resident is allowed to collect samples for lead and copper monitoring, the water system must provide written instructions for sample collection procedures. 30 Tex. Admin. Code § 290.117(h)(1).
46. **Lead and Copper Tap Sample Analytical methods.** Analysis for lead and copper shall be conducted using methods stated in 40 C.F.R. § 141.89, in laboratories accredited by the executive director. Analysis for pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature may be conducted in any laboratory approved by the executive director under 30 Tex. Admin. Code § 290.121 utilizing the EPA methods prescribed in 40 C.F.R. § 141.89. In addition, water systems must comply with Sections (A)–(E) of 30 Tex. Admin. Code § 290.117(h)(2) which indicate that: (1) the practical quantitation levels (“PQLs”) and the method detection limits (“MDLs”) must comply with 40 C.F.R. § 141.89 and the laboratory accredited for the analysis of lead and copper tap samples must achieve the MDL of 0.001 mg/L for lead if

composited entry point water samples are analyzed for lead; (2) The executive director may allow the use of previously collected monitoring data if the data were collected in accordance with 40 C.F.R. § 141.89; (3) All lead levels measured between the PQL and MDL must either be reported as measured or reported as one-half the PQL. All levels below the lead MDLs must be reported as zero; (4) All copper levels measured between the PQL and the MDL must be either reported as measured or reported as one-half the PQL. All levels below the copper MDL must be reported as zero; and (5) First-draw-tap samples must be received in the laboratory within 14 days after the collection date. 30 Tex. Admin. Code § 290.117(h)(2)(A)–(E).

47. **Reporting Lead and Copper Tap Sample Results.** Tap sample results shall be reported within ten days following the end of each monitoring period as specified by the executive director. For systems on annual or less frequent schedules, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the executive director has established an alternate monitoring period, the last day of that period. 30 Tex. Admin. Code § 290.117(i)(1).
48. **Reporting Requirements for Total Organic Carbon.** Systems treating surface water or groundwater under the direct influence of surface water shall properly complete and submit periodic reports to demonstrate compliance with 30 Tex. Admin. Code § 290.112. The reports must be submitted to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period. 30 Tex. Admin. Code § 290.112(e)(1).
49. **Compliance Determination for Total Organic Carbon Reporting.** A system that fails to report the results of monitoring tests required by 30 Tex. Admin. Code § 290.112 commits a reporting violation. Systems may use only data collected under the provisions of this section to qualify for reduced monitoring. 30 Tex. Admin. Code § 290.112(f)(2).
50. **Surface Water Monthly Operating Reports.** Any owner or operator of a public water system subject to the provisions of 30 Tex. Admin. Code § 290.110 is required to report to the executive director the results of any test, measurement, or analysis required by this section. Public water systems that use surface water sources or groundwater sources under the direct influence of surface water must submit a Surface Water Monthly Operating Report (commission Form 0102C), a Surface Water Monthly Operating Report (commission Form 0102D) for alternative technologies, or a Surface Water Monthly Operational Report for Plants That Do Not Have a Turbidimeter on Each Filter (commission Form 0103) each month. Monthly and quarterly reports required by this section must be submitted to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box

13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period. 30 Tex. Admin. Code § 290.110(e)(2), (e)(6).

51. **Surface Water Monthly Operating Reports, Continued.** Public water systems must properly complete and submit periodic reports to demonstrate compliance with 30 Tex. Admin. Code § 290.111. A system that treats surface water sources or groundwater sources under the direct influence of surface water must submit a Surface Water Monthly Operating Report each month for each plant. Periodic reports required by this section must be submitted to the Water Supply Division, Texas Commission on Environmental Quality, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period. 30 Tex. Admin. Code § 290.111(h)(2)(B), (h)(9).
52. **Safe Drinking Water.** Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must meet the requirements of Tex. Health & Safety Code § 341.031 and commission rules. Tex. Health & Safety Code § 341.0315(c).

### **Appointment of Receiver**

4.6 At the request of TCEQ, the Attorney General shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water utility under certain conditions, including abandonment of the PWS or violations of prior final administrative orders. Tex. Water Code § 13.412(a).

4.7 The Court shall appoint a receiver if an appointment is necessary to (1) guarantee the collection of assessments, fees, penalties, or interest; (2) to guarantee continuous and adequate service to the customers of a water utility; or (3) to prevent continued or repeated violation of a final order. Tex. Water Code § 13.412(b).

4.8 Upon appointment by the Court and execution of bond, the receiver shall take possession of the assets of the utility specified by the court and, until discharged, perform the duties directed by the court to preserve the assets, carry on the business of the utility, and strictly observe the final order involved. Tex. Water Code § 13.412(d).

## **State Enforcement Authority**

**4.9** TCEQ may issue administrative orders and assess administrative penalties against a public water system for violations of applicable statutes and rules pursuant to TCEQ's authority under Tex. Water Code §§ 5.012, 7.002, and Tex. Health & Safety Code § 341.031.

**4.10** As set forth in Texas Health & Safety Code § 341.048(a), a person may not cause, suffer, allow, or permit a violation of Chapter 341 of the Texas Health and Safety Code or a rule or order adopted under that chapter.

**4.11** As set forth in Texas Health & Safety Code § 341.048(b), a person who violates Chapter 341, Subchapter C, of the Texas Health and Safety Code, or a rule or order adopted under the subchapter, "shall be assessed a civil penalty of not less than \$50 nor more than \$5,000 for each violation. Each day of a continuing violation is a separate violation."

**4.12** "A person may not cause, suffer, allow, or permit a violation of a statute within [TCEQ's] jurisdiction or a rule adopted or an order or permit issued under such a statute." Tex. Water Code § 7.101.

**4.13** The Attorney General may institute a suit in the name of the State of Texas to enforce state statutes and TCEQ rules or orders through injunctive relief and civil penalties as set forth in Tex. Health & Safety Code § 341.048(e) and Tex. Water Code §§ 7.105, 7.032.

## **V. BACKGROUND**

**5.1** At all times relevant to this lawsuit, Toyah owns and operates a PWS located approximately four miles southwest of Toyah on County Road 215 in Reeves County, Texas. Toyah's PWS meets PWS requirements pursuant to 30 Tex. Admin. Code § 290.38(71) and community water system requirements pursuant to 30 Tex. Admin. Code § 290.38(15)

because it distributes drinking water to approximately 50 residential connections serving 300 people on a year-round basis.

**5.2** Toyah continues to own and operate its PWS at the time of the filing of this lawsuit.

### **Administrative Proceedings**

**5.3** TCEQ issued at least four administrative orders regarding Toyah's past PWS violations: TCEQ Docket Nos. 2017-1431-PWS-E; 2019-0591-PWS-E; 2020-0556-PWS-E ("June 2021 Order", attached as **Exhibit A**); and 2020-1352-PWS-E ("November 2021 Order", attached as **Exhibit B**). TCEQ conducted two on-site compliance investigations of Toyah's PWS from April 7, 2022, through July 13, 2022; and September 27, 2022, through September 28, 2022. These investigation reports, without attachments, are provided in **Exhibit C** and **Exhibit D** respectively.

### **March 2020 Record Review**

**5.4** From March 16, 2020, through March 27, 2020, TCEQ conducted a record review of Toyah's PWS to determine compliance with the Texas Public Drinking Water Rules and documented several violations. Specifically, Toyah failed to:

- A.** Comply with the MCL of 0.080 mg/L for TTHM based on the locational running annual average, and to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director, in violation of 30 Tex. Admin. Code §§ 290.115(f)(1), 290.122(b)(2)(A),(f), and Tex. Health & Safety Code § 341.0315(c).<sup>1</sup>
- B.** Conduct an operation evaluation and submit a written operation evaluation report to the executive director within 90 days after being notified of analytical results that caused an exceedance of the

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<sup>1</sup> See Exhibit A, June 2021 Order, Conclusions of Law No. 2.

operational evaluation level for TTHM, in violation of 30 Tex. Admin. Code § 290.115(e)(2).<sup>2</sup>

- C. Collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director, in violation of 30 Tex. Admin. Code § 290.117(c)(2)(C), (h), and (i)(1).<sup>3</sup>

### **November 2020 Record Review**

5.5 On September 22, 2020, and from November 9, 2020, through November 13, 2020, TCEQ conducted a record review of Toyah’s PWS to determine compliance with the Texas Public Drinking Water Rules and documented several violations. Specifically, Toyah failed to:

- A. Submit a Total Organic Carbon Monthly Operating Report (“TOCMOR”) with the required total organic carbon and alkalinity sampling data to the executive director each month by the tenth day of the month following the end of the reporting period, in violation of 30 Tex. Admin. Code § 290.112(e)(1),(f)(2), and TCEQ Agreed Order Docket No. 2019-0591-PWS-E, Ordering Provision No. 2.a.<sup>4</sup>
- B. Submit a Surface Water Monthly Operating Report (“SWMOR”) with required turbidity and disinfectant residual data to the executive director by the tenth day of the month following the end of the reporting period in violation of 30 Tex. Admin. Code §§ 290.110(e)(2), (e)(6), 290.111(h)(2)(B), (h)(9), and TCEQ Agreed Order Docket No. 2019-0591-PWS-E, Ordering Provision No. 2.b.v.<sup>5</sup>

### **April 7, 2022 – July 13, 2022 Compliance Investigation**

5.6 From April 7, 2022, through July 13, 2022, TCEQ conducted a compliance investigation at the PWS (“the compliance investigation”). Based on the lack of records

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<sup>2</sup> *Id.*, Conclusions of Law No. 3.

<sup>3</sup> *Id.*, Conclusions of Law No. 4.

<sup>4</sup> *See* Exhibit B, Conclusions of Law No. 2.

<sup>5</sup> *Id.*, Conclusions of Law No. 3.



produced and the physical inspection of the system, TCEQ investigators determined Toyah violated the Texas Drinking Water Rules by failing to do the following<sup>6</sup>:

- i. Ensure that no cross-connection or interconnection exists in the filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment.<sup>7</sup>
- ii. Obtain a permit for discharging wastes from water treatment processes.<sup>8</sup>
- iii. Adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted.<sup>9</sup>
- iv. Maintain up-to-date chemical and microbiological monitoring plans.<sup>10</sup>
- v. Maintain an accurate and up-to-date map of the distribution system and make it available so that valves and mains can be easily located during emergencies.<sup>11</sup>
- vi. Maintain a record of operations for at least two years with the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation.<sup>12</sup>
- vii. Conduct annual inspections (by water system personnel or a contracted inspection service) on the ground elevated storage tank to determine that the vents are in place and properly secured, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.<sup>13</sup>

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<sup>6</sup> See Exhibit C at 5.

<sup>7</sup> 30 Tex. Admin. Code § 290.42(d)(2).

<sup>8</sup> 30 Tex. Admin. Code § 290.42(i); Texas Water Code § 26.121.

<sup>9</sup> 30 Tex. Admin. Code § 290.46(i).

<sup>10</sup> 30 Tex. Admin. Code § 290.121(a).

<sup>11</sup> 30 Tex. Admin. Code § 290.46(n)(2).

<sup>12</sup> 30 Tex. Admin. Code § 290.46(f)(3)(A)(iii).

<sup>13</sup> 30 Tex. Admin. Code § 290.46(m)(1)(A).

- viii. Maintain records of the dates that dead-end mains were flushed.<sup>14</sup>
- ix. Flush all dead-end mains at monthly intervals.<sup>15</sup>
- x. Complete customer service inspection certificates prior to providing continuous water services to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities.<sup>16</sup>
- xi. Notify and obtain the approval of TCEQ prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities.<sup>17</sup>
- xii. Monitor the disinfectant residual tests at least once per day.<sup>18</sup>
- xiii. Compile and keep an up-to-date plant operation manual for operator review and reference.<sup>19</sup>
- xiv. Maintain a full-face self-contained breathing apparatus or supplied air respirator (for when chlorine gas is used) that meets OSHA standards for constructions and operation.<sup>20</sup>
- xv. Provide adequate ventilation, including both high level and floor level screened vents, for all enclosures in which gas chlorine is being stored or fed.<sup>21</sup>
- xvi. Provide flow-measuring devices to measure the raw water supplied to the plant, the recycled decant water, the treated water used to backwash the filters, and the treated water discharged from the plant.<sup>22</sup>
- xvii. Conduct required calibrations of on-line turbidimeters with primary standards once every 90 days.<sup>23</sup>

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<sup>14</sup> 30 Tex. Admin. Code § 290.46(f)(3)(A)(iv)

<sup>15</sup> 30 Tex. Admin. Code § 290.46(l).

<sup>16</sup> 30 Tex. Admin. Code § 290.46(j).

<sup>17</sup> 30 Tex. Admin. Code § 290.39(j).

<sup>18</sup> 30 Tex. Admin. Code § 290.110(c)(4)(C).

<sup>19</sup> 30 Tex. Admin. Code § 290.42(1).

<sup>20</sup> 30 Tex. Admin. Code § 290.42(e)(4).

<sup>21</sup> 30 Tex. Admin. Code § 290.42(e)(4)(C).

<sup>22</sup> 30 Tex. Admin. Code § 290.42(d)(5).

<sup>23</sup> 30 Tex. Admin. Code § 290.46(s)(2)(B)(iii).

- xviii. Maintain toilet and handwashing facilities provided in accordance with established standards of good public health engineering practices at all installations requiring frequent visits by operating personnel.<sup>24</sup>
- xix. Enclose the water treatment facility and all appurtenances thereof by an intruder-resistant fence, and lock gates during periods of darkness and when the plant is unattended. Install all potable water storage tanks and pressure maintenance facilities in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates.<sup>25</sup>
- xx. Maintain a computer and software for recording performance data, maintaining records, and submitting reports to the executive director.<sup>26</sup>
- xxi. Maintain a record of the amount of water treated and distributed each day.<sup>27</sup>
- xxii. Maintain a record of the amount of chemicals used daily to treat surface water.<sup>28</sup>
- xxiii. Install vacuum breakers at each hose bibb in the facility.<sup>29</sup>
- xxiv. Store dry chemicals off the floor in a dry room that is located above ground and protected against flooding or wetting from floors, walls, and ceilings.<sup>30</sup>
- xxv. Securely install all water system electrical wiring in compliance with a local or national electric code.<sup>31</sup>
- xxvi. Make operating records accessible for review during inspections and be available to the executive director upon request.<sup>32</sup>

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<sup>24</sup> 30 Tex. Admin. Code § 290.42(h).

<sup>25</sup> 30 Tex. Admin. Code §§ 290.42(m), 290.43(e).

<sup>26</sup> 30 Tex. Admin. Code § 290.42(d)(16).

<sup>27</sup> 30 Tex. Admin. Code § 290.46(f)(3)(A)(ii)(I).

<sup>28</sup> 30 Tex. Admin. Code § 290.46(f)(3)(A)(i)(I).

<sup>29</sup> 30 Tex. Admin. Code § 290.42(d)(2)(A).

<sup>30</sup> 30 Tex. Admin. Code § 290.42(f)(1)(D).

<sup>31</sup> 30 Tex. Admin. Code § 290.46(v).

<sup>32</sup> 30 Tex. Admin. Code § 290.46(f)(2).

- xxvii. Provide facilities for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use.<sup>33</sup>
- xxviii. Provide ample working room, good lighting, and good drainage provided by sloping floors, gutters, and sumps in pipe galleries.<sup>34</sup>
- xxix. Maintain liquid level indicators on clearwells and water storage tanks at the tank site.<sup>35</sup>
- xxx. Post a legible sign at each of its production, treatment, and storage facilities, located in plain view and provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.<sup>36</sup>
- xxxi. Identify influent, effluent, waste backwash, and chemical feed lines by the use of labels or various colors of paint.<sup>37</sup>
- xxxii. Maintain bulk storage facilities to store at least a 15-day supply of all chemicals needed to comply with minimum treatment technique and MCL requirements.<sup>38</sup>
- xxxiii. Label every chemical bulk storage facility and day tank so as to identify the facility's or tank's contents and maintain a device that indicates the amount of chemical remaining in the facility or tank.<sup>39</sup>
- xxxiv. Maintain containment facilities for a single container or for multiple interconnected containers large enough to hold the maximum amount of chemical that can be stored with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.<sup>40</sup>
- xxxv. Maintain facilities in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.<sup>41</sup>

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<sup>33</sup> 30 Tex. Admin. Code § 290.42(e)(3)(D).

<sup>34</sup> 30 Tex. Admin. Code § 290.42(d)(12).

<sup>35</sup> 30 Tex. Admin. Code § 290.43(c)(4).

<sup>36</sup> 30 Tex. Admin. Code § 290.46(t).

<sup>37</sup> 30 Tex. Admin. Code § 290.42(d)(13).

<sup>38</sup> 30 Tex. Admin. Code § 290.42(f)(1)(A).

<sup>39</sup> 30 Tex. Admin. Code § 290.42(f)(1)(C).

<sup>40</sup> 30 Tex. Admin. Code § 290.42(f)(1)(E)(i)(I).

<sup>41</sup> 30 Tex. Admin. Code § 290.46(m)(4).

- xxxvi. Ensure that the production, treatment, and distribution facilities at the public water system are operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director.<sup>42</sup>

5.7 The TCEQ investigators also inquired about several outstanding provisions from the June 2021 and November 2021 Orders. After questioning Toyah, the investigation team found that it is still in violation of the June 2021 Ordering Provisions 2.a.iv. and 2.a.v., and in violation of the November 2021 Ordering Provisions 2.a., 2.b.i., and 2.b.ii. by failing to do the following:

- i. Implement improvements to the facility's process, procedures, guidance, training, and/or oversight to ensure that all future lead and copper tap samples are collected, analyzed, and the results are reported to the executive director within 10 days following the end of each monitoring period. (June 2021 Order).
- ii. Collect the required number of lead and copper tap samples, have the samples analyzed, and report the results to the executive director within ten days following the end of the monitoring period. (June 2021 Order).
- iii. Within the first quarter after the effective date of the Order, submit complete and accurate TOCMORs with the required total organic carbon and alkalinity sampling data to the executive director by the tenth day of the month following the end of each reporting period. (November 2021 Order).
- iv. Update the facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished including the timely submission of signed and certified SWMORs and TOCMORs. (November 2021 Order).
- v. Begin submitting complete and accurate SWMORs with the required turbidity and disinfection residual data to the executive director by the tenth day of the month following the end of each reporting period. (November 2021 Order).

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<sup>42</sup> 30 Tex. Admin. Code § 290.46(e).

## **September 27, 2022 – September 28, 2022 Compliance Investigation**

**5.8** On September 27, 2022, TCEQ investigators inspected the system to check for chlorine residual, pressure, and turbidity. The investigators reported free residual chlorine concentration levels of 0.08 mg/L, 0.06 mg/L, and 0.03 mg/L, which are less than the minimum level of 0.2 mg/L required by 30 Tex. Admin. Code § 290.110(b)(4). The investigators then notified an operator of the system about the system’s failure to maintain the minimum residual chlorine concentration level, as well as the system’s failure to take necessary corrective measures. Investigators inspected the site again on September 28, 2022, and found free residual chlorine concentration levels of 0.05 mg/L and 0.04 mg/L. While on site, the investigators notified a system operator a second time that the system’s failure to maintain the requisite minimum residual chlorine concentration level violated 30 Tex. Admin. Code § 290.110(b)(4). The system operator admitted that necessary corrective measures (*e.g.*, flushing the system and increasing residual chlorine concentration levels) had not begun and would not be commenced immediately.

### **Current Compliance**

**5.9** As of the date of filing of this Amended Petition, Toyah has not submitted any documentation or records to TCEQ indicating compliance with the outstanding TCEQ ordering provisions or any relevant TCEQ rules.

## **VI. VIOLATIONS AND CIVIL PENALTIES**

**6.1** Any person who causes, suffers, allows, or permits a violation of Chapter 341, Texas Health and Safety Code, or a rule or order adopted thereunder, “shall be assessed a civil penalty of not less than \$50 nor more than \$5,000 for each violation. Tex. Health & Safety Code § 341.048(b). “Each day of a continuing violation is a separate violation.” *Id.*

**6.2** Toyah violated Texas Water Code Section 7.101, Texas Health and Safety Code Sections 341.0315 and 341.048, Texas Drinking Water Rule 290.117, and the June 2021 Order when it failed to comply with Ordering Provision 2.a.iv. of the Order. The provision required Toyah to “implement improvements to the [f]acility's process, procedures, guidance, training, and/or oversight to ensure that all future lead and copper tap samples are collected, analyzed, and the results are reported to the [e]xecutive [d]irector within 10 days following the end of each monitoring period.”<sup>43</sup> During the compliance investigation, TCEQ investigators discovered Toyah had almost no knowledge of what was required of it or the PWS to implement such improvements. TCEQ investigators noted that Toyah informed them that “all of the information that it has pertaining to the lead and copper sampling was information provided to her by the TCEQ staff in the Lead and Copper division of Office of Water, along with the addresses from City of Toyah for where the samples are taken.”<sup>44</sup> The TCEQ investigators noted there were no implemented improvements meeting the requirements of the provision. Therefore, Toyah remains in violation of the June 2021 Order, Ordering Provision 2.a.iv. since July 29, 2021.<sup>45</sup>

**6.3** Toyah violated Texas Water Code Section 7.101, Texas Health and Safety Code Sections 341.0315 and 341.048, Texas Drinking Water Rule 290.117, and the June 2021 Order when it failed to abide by Ordering Provision 2.a.v. of the Order. That provision required Toyah to “collect the required number of lead and copper tap samples, have the samples analyzed, and report the results to the [TCEQ] [e]xecutive [d]irector within ten days

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<sup>43</sup> See Exhibit A, June 2021 Order, Ordering Provision 2.a.iv.

<sup>44</sup> See Exhibit C at 3.

<sup>45</sup> TCEQ ordered Toyah to comply with the provision 45 days after the effective date of the order (the date it was signed by the commission). The effective date of the order was June 14, 2021.

following the end of the monitoring period.”<sup>46</sup> During the compliance investigation, investigators asked Toyah about the status of Toyah’s compliance with this provision. Toyah told the investigators that it “took Lead and Copper samples last year (September 27, 2021), but . . . did not give any indication that [it] would be taking samples again this year.”<sup>47</sup> The investigation team could not find evidence that Toyah submitted the lead and copper samples, had the samples analyzed, or reported the results of those analyses, if any. To date, Toyah has failed to submit evidence of compliance with this ordering provision. Therefore, Toyah remains in violation of the June 2021 Order, Ordering Provision 2.a.v., since July 29, 2022.<sup>48</sup>

**6.4** Toyah violated Texas Water Code Section 7.101, Texas Health and Safety Code Sections 341.0315 and 341.048, Texas Drinking Water Rule 290.112, and the November 2021 Order when it failed to comply with Ordering Provision 2.a. of the Order. That provision required Toyah to “within the first quarter after the effective date of this Order, submit complete and accurate TOCMORs with the required total organic carbon and alkalinity sampling data to the [e]xecutive [d]irector by the tenth day of the month following the end of each reporting period.”<sup>49</sup> During the compliance investigation, investigators asked Toyah about the status of its compliance with the provision. Toyah told the investigators that it “takes TOC (total organic carbon and alkalinity) samples, but that . . . is not currently completing the reports due to being unfamiliar with the form.”<sup>50</sup> Since Toyah admits to not

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<sup>46</sup> See Exhibit A, June 2021 Order, Ordering Provision 2.a.v.

<sup>47</sup> See Exhibit C at 3.

<sup>48</sup> TCEQ ordered Toyah to comply with the provision 410 days after the effective date of the order (the date it was signed by the commission). The effective date of the order was June 14, 2021.

<sup>49</sup> See Exhibit B, November 2021 Order, Ordering Provision 2.a. The effective date of the order was November 9, 2021.

<sup>50</sup> See Exhibit C at 4.



completing these reports, it violated Ordering Provision 2.a. and remains in violation of the provision.<sup>51</sup>

**6.5** Toyah violated Texas Water Code Section 7.101, Texas Health and Safety Code Sections 341.0315 and 341.048, Texas Drinking Water Rules 290.110, 290.111, and 290.112, and the November 2021 Order when it failed to comply with Ordering Provision 2.b.i. of the Order. That provision required Toyah to “update the [f]acility’s operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submission of signed and certified SWMORs and TOCMORs.”<sup>52</sup> During the investigation, TCEQ investigators asked Toyah about its compliance with this provision. Toyah indicated that “there would be an individuals [sic] who was with, or being sent out by, the EPA to discuss the paperwork that needed to be filled out prior to being submitted to Austin [TCEQ]. However, only the TOCMORs will be being [sic] reviewed and looked at, not the SWMORs.”<sup>53</sup> Since Toyah admitted that only the TOCMORs will be reviewed and submitted to TCEQ, and since TCEQ has no record of any compliance with this provision, Toyah violated Ordering Provision 2.b.i. of the November 2021 Order and remains in violation.<sup>54</sup>

**6.6** Toyah violated Texas Water Code Section 7.101, Texas Health and Safety Code Sections 341.0315 and 341.048, Texas Drinking Water Rules 290.110 and 290.111, and the November 2021 Order when it failed to comply with Ordering Provision 2.b.ii. That

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<sup>51</sup> TCEQ ordered Toyah to comply with the provision within the first quarter after the effective date of the Order. The first quarter after the effective date was from January 1 through March 31. So, Toyah had between those dates to complete this ordering provision. Since the second quarter started on April 1, that is the date their violation of this ordering provision starts. Thus, the beginning date of this violation is April 1, 2022. *See* Exhibit B, November 2021 Order, Ordering Provision 2.a.

<sup>52</sup> Exhibit B, November 2021 Order, Ordering Provision 2.b.i.

<sup>53</sup> *See* Exhibit C at 4.

<sup>54</sup> TCEQ ordered Toyah to comply with this ordering provision within 30 days after the effective date of the Order. The effective date of the order was November 9, 2021.

provision required Toyah to “[b]egin submitting complete and accurate SWMORs with the required turbidity and disinfection residual data to the [e]xecutive [d]irector by the tenth day of the month following the end of each reporting period . . . . This provision will be satisfied upon six months of compliant reporting.”<sup>55</sup> During the investigation, TCEQ investigators asked Toyah about its compliance with this provision. Toyah indicated that it “still cannot complete the SWMORs due to still not having the appropriate level of license to certify the results, though [it]. . . plans to discuss the completion of the SWMORs with an individual who will be coming to speak with [it] at the end of July.”<sup>56</sup> Since Toyah admits it failed to begin submitting complete and accurate SWMORs as required by Ordering Provision 2.b.ii., Toyah violated the provision and remains in violation.<sup>57</sup>

**6.7** Toyah violated Texas Drinking Water Rule 290.110(b)(4) by failing to maintain a free residual chlorine level of 0.2 mg/L in the water within its distribution system. On September 27, 2022, TCEQ investigators inspected the system and reported free residual chlorine levels of 0.08 mg/L, 0.06 mg/L, and 0.03 mg/L. Investigators inspected the site again on September 28, 2022, and found free residual chlorine levels of 0.05 mg/L and 0.04 mg/L. Thus, Toyah violated 30 Tex. Admin. Code § 290.110(b)(4), Texas Water Code Section 7.101, and Texas Health and Safety Code Sections 341.0315 and 341.048 on September 27 and 28, 2022.

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<sup>55</sup> Exhibit B, November 2021 Order, Ordering Provision 2.b.ii.

<sup>56</sup> See Exhibit C at 4.

<sup>57</sup> TCEQ ordered Toyah to comply with this ordering provision within 30 days after the effective date of the Order. The effective date of the order was November 9, 2021.

**6.8** In addition to the violations laid out in paragraphs 6.2–6.7, TCEQ’s extensive on-site investigation in April through July 2022 documented numerous violations of the Texas Drinking Water Rules. Those violations are listed in the table below<sup>58</sup>:

<b>TOYAH’S VIOLATIONS</b>	<b>RULE(S) VIOLATED</b>	<b>START DATE</b>
Failure to ensure that no cross-connections exist between treated, post-chlorinated water, and raw water before it enters distribution.	30 Tex. Admin. Code § 290.42(d)(2)	not specified
Failure to obtain a permit prior to allowing a discharge of plant discharge water into a seasonal creek.	30 Tex. Admin. Code § 290.42(i); Tex. Water Code § 26.121	1/28/2022
Failure to have a plumbing ordinance in place and abiding by it.	30 Tex. Admin. Code § 290.46(i)	4/7/2022
Failure to maintain an up-to-date chemical and microbiological monitoring plan that is maintained and kept at the treatment plant and at a central location.	30 Tex. Admin. Code § 290.121(a)	4/7/2022
Failure to maintain an accurate and up-to-date map of the distribution system to properly locate valves and mains in the system.	30 Tex. Admin. Code § 290.46(n)(2)	4/7/2022
Failure to maintain a complaint logbook of any complaints received or looked into by the water system.	30 Tex. Admin. Code § 290.46(f)(3)(A)(iii)	4/7/2022
Failure to conduct annual tank inspections on the ground storage tank (also known as the clearwell) and the standpipe.	30 Tex. Admin. Code § 290.46(m)(1)(A)	4/7/2022
Failure to maintain records of flushing of mains, lines and any dead-end lines or mains; and failure to flush mains, lines, and any dead-end lines.	30 Tex. Admin. Code §§ 290.46(f)(3)(A)(iv), 290.46(1)	4/7/2022

<sup>58</sup> See Exhibit C at 5–18.

Failure to have a means of conducting customer service inspections when the need arises.	30 Tex. Admin. Code § 290.46(j)	4/7/2022
Failure to bring the water treatment plant back up to preapproved status and making changes to the plant prior to obtaining approval.	30 Tex. Admin. Code § 290.39(j)	4/7/2022
Failure to test chlorine residual in the distribution system on a daily basis.	30 Tex. Admin. Code § 290.110(c)(4)(C)	4/7/2022
Failure to maintain a plant operations manual that is kept up-to-date when changes are made at the plant.	30 Tex. Admin. Code § 290.42(1)	4/7/2022
Failure to ensure that a Self-Contained Breathing Apparatus (SCBA) or supplied air respirator are provided in the event of an emergency pertaining to a chlorine leak.	30 Tex. Admin. Code § 290.42(e)(4)(A)	4/7/2022
Failure to ensure that there is both a high level and floor level screened vents in the chlorine room where the 150-pound chlorine cylinder is housed.	30 Tex. Admin. Code § 290.42(e)(4)(C)	4/7/2022
Failure to have a flow rate meter for the disinfection zone, treated water volumetric meter, and a backwash flow rate meter to determine the amount of water that passes through each of these areas of the plant.	30 Tex. Admin. Code § 290.42(d)(5)	6/15/2018
Failure to conduct required calibrations of the two on-line turbidimeters at least once every 90 days.	30 Tex. Admin. Code § 290.46(s)(2)(B)(iii)	6/15/2018
Failure to have proper sanitary facilities, toilet and hand washing facilities, at the water plant.	30 Tex. Admin. Code § 290.42(h)	6/15/2018
Failure to ensure that there is an intruder-resistant fence around the water plant and water storage tanks.	30 Tex. Admin. Code §§ 290.42(m), 290.43(e)	6/15/2018

Failure to have proper supervisory control and data acquisition (SCADA) with remote access away from the water plant.	30 Tex. Admin. Code § 290.42(d)(16)	6/15/2018
Failure to record the amount of chemicals used daily to treat surface water.	30 Tex. Admin. Code § 290.46(f)(3)(A)(i)(I)	4/7/2022
Failure to record the amount of water treated and that enters distribution on a daily basis.	30 Tex. Admin. Code § 290.46(f)(3)(A)(ii)(I)	4/7/2022
Failure to install vacuum breakers at each hose bibb located on the side of the clearwell.	30 Tex. Admin. Code § 290.42(d)(2)(A)	6/15/2018
Failure to keep all dry chemicals stored off the floor.	30 Tex. Admin. Code § 290.42(f)(1)(D)	1/28/2022
Failure to ensure that all electrical wiring is securely installed and in compliance with local and/or national electrical codes.	30 Tex. Admin. Code § 290.46(v)	1/14/2022
Failure to provide a response to an information request pertaining to the water operator's daily operating notes.	30 Tex. Admin. Code § 290.46(f)(2)	6/2/2022
Failure to have working scales to denote the amount of chlorine being used on a daily basis.	30 Tex. Admin. Code § 290.42(e)(3)(D)	6/15/2018
Failure to ensure that there is ample working room around the building housing the water treatment package plant, with good lighting, and proper draining of the floor to prevent water ponding and creating a slip hazard.	30 Tex. Admin. Code §§ 290.42(d)(12), 290.46(m)	6/15/2018
Failure to ensure that the liquid level indicator located on the side of the clearwell matches the liquid level indicated through the SCADA system, and that the standpipe is	30 Tex. Admin. Code § 290.43(c)(4)	4/7/2022

equipped with a liquid level indicator.		
Failure to maintain the ownership sign located on the gate/fencing of the water plant and at the standpipe.	30 Tex. Admin. Code § 290.46(t)	6/15/2018
Failure to properly color code piping to indicate type of water flowing through the various pieces of pipe at the water treatment package plant.	30 Tex. Admin. Code § 290.42(d)(13)	6/15/2018
Failure to ensure that there are enough chemicals in storage to ensure a reliable supply, especially in times of emergency.	30 Tex. Admin. Code § 290.42(f)(1)(A)	4/7/2022
Failure to ensure that the day tank for alum is properly labeled with the chemical contents.	30 Tex. Admin. Code § 290.42(f)(1)(C)	4/7/2022
Failure to ensure that containment facilities for the alum day tank can hold a minimum of 110% of the total volume of the container.	30 Tex. Admin. Code § 290.42(f)(1)(E)(ii)(I)	4/7/2022
Failure to prevent the harboring of disease bearing insects (mosquitos) and encouraging other potential disease bearing vectors to gather in and around a fire hydrant.	30 Tex. Admin. Code § 290.46(m)(4)	3/28/2022
Failure to ensure that all personnel who operate the public water system plant are licensed or are working under the direct supervision of a licensed operator.	30 Tex. Admin. Code § 290.46(e)	not specified
Failure to maintain a drought contingency plan that can be implemented in times of drought.	30 Tex. Admin. Code § 288.20(a)	4/7/2022

**6.9** Toyah shall be assessed a civil penalty within the monetary statutory range of not less than \$50 nor more than \$5,000 for each day of each violation alleged in Section 6 of this Amended Petition. Toyah violated provisions of the Texas Water Code, the Texas Health and Safety Code, Texas Drinking Water Rules and TCEQ Orders, and remains out of compliance even as of the filing of this Amended Petition. Hence, the State's claim for monetary relief continues to increase daily.

## **VII. APPOINTMENT OF RECEIVER**

**7.1** The Texas Water Code states the Court shall appoint a receiver when it finds (1) that it is necessary to guarantee continued and adequate service to the customers of the PWS, or (2) when the Court finds it necessary to prevent continued or repeated violations of a final order. Tex. Water Code § 13.412(b)(2), (3).

**7.2** TCEQ's investigation indicates advanced stages of neglect and mismanagement of the PWS. At this point, prolonged mismanagement of the PWS by Toyah will likely lead to further degradation of the system itself, and importantly, pose a serious threat of harm to Toyah's customers.

**7.3** Section 6 indicates that Toyah is (1) unable to guarantee continued and adequate water services to its customers and (2) cannot carry out the PWS services without violating TCEQ's rules and orders. At this time, Toyah is in violation of over thirty Texas Drinking Water Rules and at least two TCEQ orders—all of which pertain to the sanitation and mechanical sustainability of the PWS and the quality of the water it distributes. Toyah gives no indication that it can rectify these violations and even admits, through its operator, that it is unable to comply with the outstanding TCEQ Ordering Provisions.

**7.4** Therefore, appointment of a receiver for Toyah's PWS is necessary to carry on its business and render continuous and adequate service to Toyah's customers, and prevent continuous or repeated violations of any applicable final orders. Tex. Water Code § 13.412(b)(3).

### **VIII. INJUNCTIVE RELIEF**

**8.1** The State seeks an appropriate injunctive order to prevent violations or threatened continuing violations and to obtain appropriate corrective actions.

**8.2** "If it appears that a person has violated, is violating, or threatens to violate a provision under [Texas Health & Safety Code, Chapter 341, Subchapter C], the commission . . . may institute a civil suit in a district court for . . . injunctive relief to restrain the person from continuing the violation or threat of violation." Tex. Health & Safety Code § 341.048(c)(1). As established above, Toyah has operated its PWS in a manner that violates these statutes and rules, and its further operation of the PWS threatens further, continuing violations. Therefore, injunctive relief is necessary to restrain Toyah from further violations.

**8.3** No bond is required of the State of Texas prior to the granting of an injunction as set forth in Tex. Health & Safety Code § 341.048(g).

### **IX. ATTORNEY'S FEES AND COSTS**

**9.1** This is an action brought by the State to recover civil penalties and to appoint a receiver. As set forth in Tex. Water Code § 7.108, and Tex. Gov't Code § 402.006(c), the Attorney General is entitled to recover and collect reasonable attorney's fees, investigative costs, and court costs incurred in relation to this proceeding on behalf of the State. In the event of an appeal to the Court of Appeals or to the Supreme Court, the Attorney General is entitled



to recover and collect its additional reasonable attorney's fees and court costs on behalf of the State.

## **X. POST-JUDGMENT INTEREST**

**10.1** Pursuant to Tex. Fin. Code § 304.003, the State asks this Court to award the State post-judgment interest on all amounts awarded in relation to this proceeding, at the maximum rate allowed by law.

## **PRAYER FOR RELIEF**

ACCORDINGLY, Plaintiff, the State of Texas, prays for judgment against the Defendant, the City of Toyah, as follows:

1. That upon trial, the Court grant appropriate temporary and permanent injunctive relief against Defendant;
2. That the State recover from Defendant civil penalties within the range allowed by law;
3. That the Court appoint a Receiver to take possession of Toyah's PWS and all related property and assume operation thereof;
4. That the Court authorize the Receiver to sell, transfer, or dispose of the PWS as the Receiver deems appropriate to ensure that it is operated in compliance with applicable laws or to pay necessary expenses of the receivership;
5. That the State recover from Defendant its reasonable attorney's fees, court costs, and reasonable investigative costs in this action;
6. That the State recover from Defendant post-judgment interest on all amounts awarded the State from the date of judgment until fully paid; and
7. That the State be granted all other relief, general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

GRANT DORFMAN  
Deputy First Assistant Attorney General

SHAWN E. COWLES  
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK  
Chief, Environmental Protection Division

/s/ Phillip Ledbetter  
PHILLIP LEDBETTER  
Assistant Attorney General  
State Bar No. 24041316  
[Phillip.Ledbetter@oag.texas.gov](mailto:Phillip.Ledbetter@oag.texas.gov)

GEORGE BLODER  
Assistant Attorney General  
State Bar No. 24132534  
[George.Bloder@oag.texas.gov](mailto:George.Bloder@oag.texas.gov)

Office of the Attorney General of Texas  
Environmental Protection Division  
P.O. Box 12548, MC-066  
Austin, Texas 78711-2548

**ATTORNEYS FOR THE STATE OF TEXAS**

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing State of Texas's First Amended Petition and Application for Injunctive Relief and Appointment of Receiver was sent by e-service on December 14, 2022, to the following attorney of record:

Barbara Boulware  
The Knight Law Firm, LLP  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752  
Tel: (512) 323-5778  
barbara@cityattorneytexas.com

**Attorney for Defendant  
City of Toyah**

/s/ Phillip Ledbetter  
PHILLIP LEDBETTER  
Assistant Attorney General

**UNSWORN DECLARATION OF RYAN SLOCUM**

**STATE OF TEXAS**

§

**COUNTY OF MIDLAND**

§

§

My name is Ryan Slocum. I am over the age of eighteen and am of sound mind and competent to make this declaration. I have personal knowledge of all facts set forth herein and those facts are correct.

I am employed as the Regional Director for El Paso and Midland for the Texas Commission on Environmental Quality (“TCEQ”). In this capacity, I am familiar with the TCEQ rules regarding monitoring and reporting at public water systems, and as they apply to the water system located at four miles southwest of Toyah on County Road 215 in Reeves County, Texas, owned and operated by the City of Toyah (“Toyah”).

In the performance of the functions of my office as the Regional Director for El Paso and Midland, I made a diligent and thorough review of the records and documents on file with the TCEQ relating to Toyah’s water system located approximately four miles southwest of Toyah on County Road 215 in Reeves County, Texas. I have read the foregoing *First Amended Petition and Application for Injunctive Relief and Appointment of Receiver*. The facts alleged therein under Sections V and VI are within my personal knowledge and true and correct.

My name is Ryan Slocum, and I am employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

\_\_\_\_\_  
Ryan Slocum  
Regional Director for El Paso and Midland, TCEQ  
Executed in Midland County, Texas, on the 14 Day of December 2022.

# **EXHIBIT A**

**TCEQ Docket No. 2020-0556-PWS-E  
“June 2021 Order”**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF TOYAH  
RN101225001

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2020-0556-PWS-E

JUN 09 2021

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

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

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

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply located on County Road 215, approximately one and a half miles from the intersection of County Road 328 near Toyah in Reeves County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 65 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).
2. During a record review conducted on March 16, 2020 through March 27, 2020, an investigator documented that:
  - a. The locational running annual average concentrations for total trihalomethanes ("TTHM") for Stage 2 Disinfection Byproducts ("DBP2") at Site 1 were 0.082 milligram per liter ("mg/L") for the second quarter of 2019, 0.098 mg/L for the third quarter of 2019, 0.102 mg/L for the fourth quarter of 2019, and 0.098 mg/L for the first quarter of 2020, and the Respondent did not provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the Executive Director regarding the failure to

comply with the maximum contaminant level ("MCL") for TTHM for the second and third quarters of 2019. Additionally, public notifications were required by August 22, 2019 and January 20, 2020, but were not provided.

- b. The Respondent did not conduct an operation evaluation and submit a written operation evaluation report to the Executive Director within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for TTHM for DBP2 at Site 1 during the second through fourth quarters of 2019.
- c. The Respondent did not collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the Executive Director for the January 1, 2017 through December 31, 2019 monitoring period.

## II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a, the Respondent failed to comply with the MCL of 0.080 mg/L for TTHM based on the locational running annual average, and failed to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the Executive Director, in violation of 30 TEX. ADMIN. CODE §§ 290.115(f)(1) and 290.122(b)(2)(A) and (f) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. As evidenced by Finding of Fact No. 2.b, the Respondent failed to conduct an operation evaluation and submit a written operation evaluation report to the Executive Director within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for TTHM, in violation of 30 TEX. ADMIN. CODE § 290.115(e)(2).
4. As evidenced by Finding of Fact No. 2.c, the Respondent failed to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the Executive Director, in violation of 30 TEX. ADMIN. CODE § 290.117(c)(2)(C), (h), and (i)(1).
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049(a), the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of \$4,500 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent paid the \$4,500 penalty.

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 6 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: The City of Toyah, Docket No. 2020-0556-PWS-E" to:

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

2. The Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order:
    - i. Provide public notification and submit a copy of each public notification, accompanied with a signed Certificate of a Delivery, to the Executive Director regarding the failure to comply with the MCL for TTHM for the second and third quarters of 2019, in accordance with 30 TEX. ADMIN. CODE § 290.122;
    - ii. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility and that a copy of the public notification, accompanied with a signed Certificate of Delivery, is submitted to the Executive Director, in accordance with 30 TEX. ADMIN. CODE § 290.122;
    - iii. Conduct an operation evaluation and submit an operation evaluation report to the Executive Director, in accordance with 30 TEX. ADMIN. CODE § 290.115. The operation evaluation report shall be submitted to:

Drinking Water Standards Section  
Water Supply Division, MC 155 (Attn: DBP)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087
    - iv. Implement improvements to the Facility's process, procedures, guidance, training, and/or oversight to ensure that all future lead and copper tap



samples are collected, analyzed, and the results are reported to the Executive Director within ten days following the end of each monitoring period, in accordance with 30 TEX. ADMIN. CODE § 290.117; and

- v. Collect the required number of lead and copper tap samples, have the samples analyzed, and report the results to the Executive Director within ten days following the end of the monitoring period, in accordance with 30 TEX. ADMIN. CODE § 290.117.
- b. Within 45 days after the effective date of this Order, submit written certification, as described in Ordering Provision No. 2.d below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i through 2.a.iv.
- c. Within 365 days after the effective date of this Order, return to compliance with the MCL for TTHM based on the locational running annual average, in accordance with 30 TEX. ADMIN. CODE § 290.115.
- d. Within 410 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 Nos. 2.a.v and 2.c. The certification shall be signed by the 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Drinking Water Special Functions Section Manager  
Water Supply Division, MC 155  
Texas Commission on Environmental Quality  
P.O. Box  
Austin, Texas 78711-3087



3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting,

lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

10. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

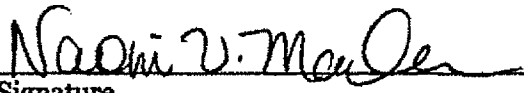
 _____ For the Commission	<u>6/14/21</u> _____ Date
 _____ For the Executive Director	<u>04/29/2021</u> _____ Date

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

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

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

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

 _____ Signature	<u>2/24/2021</u> _____ Date
<u>Naomi V. Machuca</u> _____ Name (Printed or typed) Authorized Representative of City of Toyah	<u>Mayor Pro Tem</u> _____ Title

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

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

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*

June 18, 2021

FIRST CLASS MAIL

The Honorable Naomi V. Machuca, Mayor Pro Tem  
The Honorable Bobby Creamer, Mayor  
City of Toyah  
P.O. Box 144  
Toyah, Texas 79785

RE: City of Toyah  
TCEQ Docket No. 2020-0556-PWS-E; Registration No. 1950004  
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Michael O'Malley of the Office of the Chief Clerk at (512) 239-3300.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis  
Chief Clerk

LG/mo

Enclosure

cc: Ronica Rodriguez, Enforcement Coordinator, TCEQ Enforcement Division

# **EXHIBIT B**

**TCEQ Docket No. 2020-1352-PWS-E  
“November 2021 Order”**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF TOYAH  
RN101225001

§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2020-1352-PWS-E

On NOV 03 2021, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Toyah (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, presented this Order to the Commission.

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

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

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

### I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply located approximately 4 miles southwest of Toyah on County Road 215 in Reeves County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 65 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).
2. During record reviews conducted on September 22, 2020 and November 9, 2020 through November 13, 2020, an investigator documented that:
  - a. The Respondent did not submit a Total Organic Carbon Monthly Operating Report ("TOCMOR") with the required total organic carbon and alkalinity sampling data to the Executive Director each month by the tenth day of the month following the end of the reporting period during the second quarter of 2020. Specifically, the Respondent did not submit TOCMORs for the reporting periods of April 2020 through June 2020.

- b. The Respondent did not submit a Surface Water Monthly Operating Report ("SWMOR") with the required turbidity and disinfectant residual data to the Executive Director by the tenth day of the month following the end of the reporting periods for April 2020 through August 2020.

## II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a, the Respondent failed to submit a TOCMOR with the required total organic carbon and alkalinity sampling data to the Executive Director each month by the tenth day of the month following the end of the reporting period, in violation of 30 TEX. ADMIN. CODE § 290.112(e)(1) and (f)(2) and TCEQ Agreed Order Docket No. 2019-0591-PWS-E, Ordering Provision No. 2.a.
3. As evidenced by Finding of Fact No. 2.b, the Respondent failed to submit a SWMOR with the required turbidity and disinfectant residual data to the Executive Director by the tenth day of the month following the end of the reporting period, in violation of 30 TEX. ADMIN. CODE §§ 290.110(e)(2) and (e)(6) and 290.111(h)(2)(B) and (h)(9) and TCEQ Agreed Order Docket No. 2019-0591-PWS-E, Ordering Provision No. 2.b.v.
4. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049(a), the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of \$3,000 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent paid the \$3,000 penalty.

## III. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 5 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Toyah, Docket No. 2020-1352-PWS-E" to:



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

2. The Respondent shall undertake the following technical requirements:
- a. Within the first quarter<sup>1</sup> after the effective date of this Order, submit complete and accurate TOCMORs with the required total organic carbon and alkalinity sampling data to the Executive Director by the tenth day of the month following the end of each reporting period, in accordance with 30 TEX. ADMIN. CODE § 290.112. This provision will be satisfied upon one quarter of compliant reporting. The TOCMORs shall be submitted to:

TOCMOR Coordinator  
Water Supply Division, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Order:
  - i. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submission of signed and certified SWMORs and TOCMORs, in accordance with 30 TEX. ADMIN. CODE §§ 290.110, 290.111, and 290.112; and
  - ii. Begin submitting complete and accurate SWMORs with the required turbidity and disinfection residual data to the Executive Director by the tenth day of the month following the end of each reporting period, in accordance with 30 TEX. ADMIN. CODE §§ 290.110 and 290.111. This provision will be satisfied upon six consecutive months of compliant reporting. The SWMORs shall be submitted to:

SWMOR Coordinator  
Water Supply Division, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

---

<sup>1</sup> "First quarter" refers to the January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31 period that is in place upon the effective date of this Order.

- c. Within 45 days after the effective date of this Order, submit written certification as described in Ordering Provision No. 2.e below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.b.i.
- d. Within 105 days after the effective date of this Order, submit written certification as described in Ordering Provision No. 2.e below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.
- e. Within 225 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. 2.b.ii. The certification shall be signed by the 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:


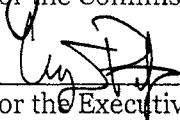
Drinking Water Special Functions Section Manager  
Water Supply Division, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

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

### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

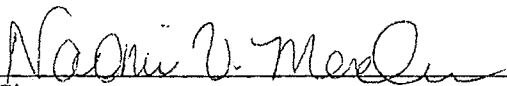
 _____ For the Commission	<u>11-9-21</u> _____ Date
 _____ For the Executive Director	<u>08/27/2021</u> _____ Date

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

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

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

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

 _____ Signature	<u>3/4/2021</u> _____ Date
<u>Naomi V. Machuca</u> _____ Name (Printed or typed) Authorized Representative of City of Toyah	<u>Mayor Pro Tem</u> _____ Title

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

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

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 10, 2021

FIRST CLASS MAIL

The Honorable Naomi V. Machuca, Mayor Pro-Tem  
The Honorable Bobby Creamer, Mayor  
City of Toyah  
P.O. Box 144  
Toyah, Texas 79785

RE: City of Toyah  
TCEQ Docket No. 2020-1352-PWS-E; Registration No. 1950004  
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Michael O'Malley of the Office of the Chief Clerk at (512) 239-3300.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis  
Chief Clerk

LG/mo

Enclosure

cc: Steven Hall, Enforcement Coordinator, TCEQ Enforcement Division

# **EXHIBIT C**

**TCEQ Investigation No. 1797025**

PWS\_1950004\_01\_19220713\_INVESTIGATION

# Texas Commission on Environmental Quality Investigation Report

The TCEQ is committed to accessibility. If you need assistance in accessing this document, please contact oce@teeq.texas.gov

**Customer: City of Toyah**  
**Customer Number: CN600665780**

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**Regulated Entity Name: CITY OF TOYAH**

**Regulated Entity Number: RN101225001**

**Investigation #** 1797025

**Incident Numbers**

377262

**Investigator:** HEATHER FAIRBANKS

**Site Classification** SW <=50 CONNECTION

**Conducted:** 04/07/2022 -- 07/13/2022

**No Industry Code Assigned**

**Program(s):** PUBLIC WATER SYSTEM/SUPPLY

**Investigation Type:** Compliance Investigation

**Location:** CITY HALL 230 WEST FIRST ST TOYAH

**Additional ID(s):** 1950004

**Address:** ,  
, ,

**Local Unit:** REGION 07 - MIDLAND

**Activity Type(s):** PWSRECON - PWS Recon- Reconnaissance investigation for surface water and groundwater facilities.

PWSCCISWCM - CCI SURFACE WATER - COMMUNITY MANDATORY

PWSCMPL - PWS Complaint

**Principal(s):**

**Role**

**Name**

RESPONDENT

CITY OF TOYAH

**Contact(s):**

Role	Title	Name	Phone
REGULATED ENTITY MAIL CONTACT	MAYOR PRO TEM	Naomi Machuca	Cell (432) 448-0814
NOE CONTACT	MAYOR	HON Bobby Creamer	Cell (432) 924-2712
REGULATED ENTITY MAIL CONTACT	MAYOR	HON Bobby Creamer	Cell (432) 924-2712
NOTIFIED	WATER OPERATOR	MS Brandie Baker	Cell (432) 943-0605
PARTICIPATED IN	WATER OPERATOR	MS Brandie Baker	Cell (432) 943-0605
REGULATED ENTITY CONTACT	WATER OPERATOR	MS Brandie Baker	Cell (432) 943-0605

**Other Staff Member(s):**

Role	Name
Investigator	KELLY BENOIT
QA Reviewer	VICKIE FOSTER
Investigator	DOUGLAS WILLIAMSON
Supervisor	RYAN SLOCUM

**Associated Check List**

Checklist Name	Unit Name
PWS GENERIC VIOLATIONS	1950004 (Part 2)
WATER EQUIPMENT	4-20-2022
PWS GENERIC VIOLATIONS (35 ITEMS)	1950004 (Part 1)
PWS STANDARD FIELD	1950004
WQ IN-HOUSE LABORATORY COMPLIANCE INVESTIGATION	1950004
WATER EQUIPMENT	5-16-2022
WATER EQUIPMENT	4-7-2022

**Investigation Comments:**

**INTRODUCTION:**

Mr. Bobby Creamer is Mayor, Ms. Naomi Machuca is Mayor Pro Tem and Ms. Brandie Baker is Water Operator. The investigator, Ms. Heather Fairbanks, notified Ms. Baker on March 22, 2022, of the planned Comprehensive Compliance Investigation (CCI) of the system. Ms. Fairbanks, accompanied by Field Investigator Mr. Douglas "Jay" Williamson and Jessica Moore, with the Environmental Protection Agency (EPA) Region 6, then met with Ms. Baker on-site on April 7, 2022, and conducted an announced CCI of the public water system (PWS).

On March 26, 2022, a complaint was received by the Texas Commission on Environmental Quality (TCEQ) Region 7 via email. The Complainant alleged that there is a leak from a fire hydrant and is concerned of possible contamination to water system and undocumented water loss.

**Daily Narrative**

On April 7, 2022, Investigator Heather Fairbanks, along with Investigator Douglas "Jay" Williamson, met with Jessica Moore, with the EPA Region 6, and Brandie Baker, water operator for the City of Toyah to conduct a CCI of the system. After reviewing what records were available for review the investigators, accompanied by Ms. Moore and Ms. Baker, traveled out to the water treatment plant to review the overall status of the plant. Once



finished reviewing the plant the investigators and Ms. Moore returned to City Hall in Toyah to check the chlorine residual, pressure, turbidity and to also take a bacteriological sample. The investigators reported a free chlorine residual of 1.51 mg/L, a pressure reading of 48 psi, a turbidity reading of 0.52 NTU, and upon receipt of the results, the bacteriological sample was absent for total coliform and E. coli.

On April 20, 2022, Investigator Heather Fairbanks, along with Investigator Jay Williamson, traveled to City Hall to check the chlorine residual, pressure and turbidity. The investigators reported a free chlorine residual of 1.51 mg/L and 1.16 mg/L, a pressure reading of 50 psi, and a turbidity reading of 0.52 NTU.

On May 16, 2022, Investigator Heather Fairbanks, along with Investigators Jay Williamson and Kelly Benoit traveled to the City of Toyah water treatment plant to take follow-up photos of the plant from the April 7, 2022, CCI. Upon arrival at the plant the investigators were met by Mr. Ed Puckett and another gentleman whom the investigators were not introduced to. Mr. Puckett was working around the water treatment plant without Brandie Baker, water operator for the City of Toyah, being present; the investigators were informed that Ms. Baker was over in Pecos attending to personal matters. The investigators walked around the plant and noted that the plant was not in operation at the time of the investigation and that the by-pass, which had been taken out of service back in November 2021 when the package plant was put back into operation, had been reconnected and was back in use to fill the clearwell with water. Upon further investigation the investigators determined that there was no water in the up-flow clarifier, though there was water being held in the filter of the package plant. Upon finishing the walk through of the plant and plant yard, the investigators traveled to City Hall to check the chlorine residual pressure and turbidity. The investigators reported a free chlorine residual of 0.9 mg/L and 1.06 mg/L, a pressure reading of 55 psi, and a turbidity reading of 1.50 NTU and 1.12 NTU.

On May 19, 2022, Investigator Heather Fairbanks contacted Water Works (PWS 1950034) to inquire about when, or if, they had hauled a load of water to Toyah to fill the clearwell at the Toyah water treatment plant. Ms. Fairbanks was informed that two loads, each load equaling around 8,000 to 9,000 gallons of water, were delivered to Toyah on May 2, 2022, but that no other loads of water had been taken to Toyah since May 2, 2022, up until Ms. Fairbanks' phone call.

On May 28, 2022, Investigator Heather Fairbanks emailed Brandie Baker to inquire about her notes, which were provided in a packet of information to TCEQ Region 7 management on May 18, 2022. The hand written notes from May 1, 2022, indicated that Ms. Baker had reconnected the by-pass, changed out the cartridge filters, and refilled the clearwell due to an issue that she had discovered with the proportions of media in both the up-flow clarifier and the filter of the package plant. No answer had been received by close of business May 31, 2022, so Ms. Fairbanks inquired again on June 2, 2022, requesting further explanation about the notes from the May 18, 2022, documents that had been provided to TCEQ Region 7 management, asking for a response by the close of business that day. No response was received from Ms. Baker regarding this inquiry.

On July 13, 2022, Investigator Heather Fairbanks, along with Investigator Jay Williamson, called Brandie Baker to talk about outstanding order provisions for Docket No. 2020-0556-PWS-E and Docket No. 2020-1352-PWS-E. The following were the comments made by Ms. Baker pertaining to the provisions that were asked about:

Docket No. 2020-0556-PWS-E

- 2.a.iv - Implement improvements to the Facility's process, procedures, guidance, training, and/or oversight to ensure that all future lead and copper tap samples are collected, analyzed, and the results are reported to the Executive Director within 10 days following the end of each monitoring period, in accordance with 30 Tex. Admin. Code 290.117. Pertaining to this provision, Ms. Baker indicated that all of the information that she has pertaining to the lead and copper sampling was information provided to her by the TCEQ staff in the Lead and Copper division of Office of Water, along with the addresses from City of Toyah for where the samples are taken.

- 2.a.v - Collect the required number of lead and copper tap samples, have the samples analyzed, and report the results to the Executive Director within ten days following the end of the monitoring period, in accordance with 30 Tex. Admin. Code 290.117. Pertaining to this provision, Ms. Baker indicated that she took Lead and Copper samples last year (September 27, 2021), but she did not give any indication that she would be taking samples again this year.

Docket No. 2020-1352-PWS-E

- 2.a - Within the first quarter after the effective date of this Order, submit complete and accurate TOCMORs with the required total organic carbon and alkalinity sampling data to the Executive Director by the tenth day of the

month following the end of each reporting period, in accordance with 30 Tex. Admin. Code 290.112. Pertaining to this provision, Ms. Baker indicated that she takes TOC (total organic carbon and alkalinity) samples, but that she is not currently completing the reports due to being unfamiliar with the form.

- 2.b.i - Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submission of signed and certified SWMORs and TOCMORs, in accordance with 30 Tex. Admin. Code 290.110, 290.111, and 290.112. Pertaining to this provision, Ms. Baker indicated that there would be an individuals who was with, or being sent out by, the EPA to discuss the paperwork that needed to be filled out prior to being submitted to Austin. However, only the TOCMORs will be being reviewed and looked at, not the SWMORs.

- 2.b.ii - Begin submitting complete and accurate SWMORs with the required turbidity and disinfection residual data to the Executive Director by the tenth day of the month following the end of each reporting period, in accordance with 30 Tex. Admin. Code 290.110 and 290.111. Pertaining to this provision, Ms. Baker indicated that she still cannot complete the SWMORs due to still not having the appropriate level of license to certify the results, though she plans to discuss the completion of the SWMORs with an individual who will be coming to speak with her at the end of July.

#### EXIT INTERVIEW

A formal Exit Interview form will be sent along with the Notice of Enforcement (NOE) letter.

#### GENERAL FACILITY AND PROCESS INFORMATION:

This community system provides treated surface water to 48 metered connections and three RV Parks with estimated retail population of 101 (per system). Mailing address, physical address, location, phone numbers, RN and CN for the system are:

P. O. Box 144                      City Hall  
Toyah, TX 79785-0144

120 West Second Street        City Hall  
Toyah, TX 79785

(432) 259-3908                  City Hall  
(432) 259-3908                  City Hall Fax  
(432) 924-2712                  Mayor Bobby Creamer (cell)  
(432) 448-0814                  Mayor Pro-Tem Naomi Machuca (cell)

RN101225001 City of Toyah Public Water Supply  
CN600665780 City of Toyah

POE 001: POE sampling is from faucet on clearwell.

Water from T & P Lake in the Davis Mountains gravity flows through a maximum 12 inch transmission line 35 miles to Toyah's water treatment plant. Water initially enters the center of a V settling tank and exits to a 175 GPM Pacific-Keystone adsorption-clarifler package plant. Alum is injected into a tube static mixer prior to the package plant. Polymer is injected at the static tube mixer only if raw water turbidity is greater than 10 NTU. Water is clarified through an upflow roughing filter of four inches of gravel and 42 inches of coarse sand. The clarified water then passes on to the downflow dual media, 24 inches of anthracite and 18 inches of sand over four inches of gravel, rapid gravity filter for final polishing. However, at some point during the fall of 2017 the water was bypassed around the settling tank and package plant, filtered through unapproved cartridge filters before then being chlorinated and sent to the clearwell. Filtered water is pumped to the clearwell and thence gravity flows to distribution. Gaseous chlorination is ahead of clearwell storage. High turbidity raw water causes the plant to shut down. All functions of the package plant are automated with appropriate shut offs. Backwash water is discharged to decant basin and allowed to evaporate. The distribution is gravity fed from the clearwell which also serves as an elevated ground tank. A standpipe, currently out of service and located on the southwest side of Toyah, would fill at 90 feet and shut off at 104 feet. This provided the system with an additional 24 feet or 0.022 MG of elevated storage.

#### System Facilities Totals:

Surface Water is purchased from T&P Lake owned by City of Balmorhea. Limited to supply.

Plant is rated at 175 GPM = 0.252 MGD  
Elevated Tank Storage = 0.250 MG  
0.250 MG from elevated ground storage (+ 0.022 MG from standpipe when in service)  
Total Storage = 0.250 MG (+ 0.100 MG when standpipe in service)  
Service Pumps = None = Gravity.

**BACKGROUND:**

A prior CCI was conducted on June 15, 2018. The system was sent to Enforcement at the time of the CCI due to not having a licensed operator, the surface water treatment package plant had been by-passed thus sending water that had not been treated to surface water treatment standards into distribution, and not having a chlorine residual for nine straight days.

Due to the ongoing issues with returning the City of Toyah Water Treatment Plant to normal operations monthly recons are being conducted to monitor chlorine residual at City Hall. Chlorine residual monitoring will continue until further notice, and/or until the water treatment plant is again operational.

**ADDITIONAL INFORMATION**

City of Toyah Public Water Supply had a waiver that required it to have a B Surface Water licensed operator on-site or readily accessible by telephone with a C Surface Water licensed operator on-site. The waiver from this requirement was revoked by the Water Supply Division per letter dated July 5, 2018, which was sent to the City of Toyah.

The City of Toyah continues to make improvements to the system as planned and approved. Bacteriological analysis is conducted by City of Odessa Laboratory Services, which is NELAC approved. Disinfectant residuals were determined with field analysis using field equipment. Final effluent water is evaluated by a combination of field and on-line equipment when the water treatment plant is operating. Toyah does not have emergency power, but emergency power is not required. Toyah has an informal agreement for generator provision with Light Tower Rentals and Basic Energy Services. Emergency planning for Toyah is through Reeves County.

Occasionally there may be a disruption of supplied raw water due to the age of the raw water transmission line from the Davis Mountains, when this happens the city restricts its water use.

**ADDITIONAL ISSUE**

It is recommended that research be conducted into the potential use of a chlorine booster, possibly located at the standpipe once it has been put back into service, to alleviate future low chlorine residual issues in distribution.

**NOE Date: 8/19/2022**

**OUTSTANDING ALLEGED VIOLATION(S)  
ASSOCIATED TO A NOTICE OF ENFORCEMENT**

**Track Number: 813725**

**Compliance Due Date: To Be Determined**

**Violation Start Date: Unknown**

**30 TAC Chapter 290.42(d)(2)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 06/04/2022

Failure to ensure that no cross-connections exist between treated, post-chlorinated water, and raw water before it enters into distribution. The pipe that was put in to send raw water into the City of Toyah was not removed, so when water was piped to the package plant and then gravity fed to distribution a co-mingling of raw and treated water occurred.

-Per 30 TAC 290.42(d)(2) - All plant piping shall be constructed so as to be thoroughly tight against leakage. No cross-connection or interconnection shall be permitted to exist in a filtration plant between a conduit carrying

filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment.

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**Track Number:** 813727

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.45(e)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to maintain a copy of the wholesale contact between the City of Balmorhea (PWS ID 1950002) and the City of Toyah (PWS ID 1950004).

-Per 30 TAC 290.45(e) - Water wholesalers. The following additional requirements apply to systems which supply wholesale treated water to other public water supplies.

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**Track Number:** 813728

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 1/28/2022

**30 TAC Chapter 290.42(i)**  
**TWC Chapter 26.121**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to obtain a permit prior to allowing a discharge of plant discharge water into a seasonal creek. This discharge occurs whenever the cone settling tank has to have the 'sludge' removed from the bottom of the tank.

-Per 30 TAC 290.42(i) - Permits for waste discharges. Any discharge of wastewater and other plant wastes shall be in accordance with all applicable state and federal statutes and regulations. Permits for discharging wastes from water treatment processes shall be obtained from the commission, if necessary.

-Per Texas Water Code (TWC) 26.121 - Unauthorized Discharge Prohibited

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**Track Number:** 813729

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.46(i)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to have a plumbing ordinance in place and abiding by it.

-Per 30 TAC 290.46(i) - Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted (See §290.47(b) of this title (relating to Appendices)). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard.

The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

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**Track Number:** 813730

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.121(a)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to maintain an up-to-date chemical and microbiological monitoring plan that is maintained and kept at the treatment plant and a central location. All that was available for review was a list of sample sites for the collection of bacteriological samples.

-Per 30 TAC 290.121(a) - Applicability. All public water systems shall maintain an up-to-date chemical and microbiological monitoring plan. Monitoring plans are subject to the review and approval of the executive director. A copy of the monitoring plan must be maintained at each water treatment plant and at a central location.

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**Track Number:** 813731

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.46(n)(2)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to maintain an accurate and up-to-date map of the distribution system to properly locate valves and mains in the system. A street map of the City of Toyah was the only map that was provided, there were no notes for where pipes or valves were located.

-Per 30 TAC 290.46(n)(2) - An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

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**Track Number:** 813732

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 288.20(a)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to maintain a drought contingency plan that can be implemented in times of drought.

-Per 30 TAC 288.20(a) - A drought contingency plan for a retail public water supplier, where applicable, must include the following minimum elements.

**Track Number:** 813733

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.46(f)(3)(A)(iii)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to maintain a complaint logbook of any complaints received or looked into by the water system. Complaints are asked about by the TCEQ Region 7 Office, which are received by the office, of the water operator, yet there is no documentation made by the operator of what corrective actions are taken pertaining to the complaints.

-Per 30 TAC 290.46(f)(3)(A)(iii) - the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation.

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**Track Number:** 813734

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.46(m)(1)(A)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to conduct annual tank inspections on the ground storage tank (also known as the clear well) and the standpipe. The last tank inspection that was provided to the investigators was dated from 2016.

-Per 30 TAC 290.46(m)(1)(A) - Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.

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**Track Number:** 813746

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.46(f)(3)(A)(iv)**

**30 TAC Chapter 290.46(l)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to maintain records of flushing of mains, lines and any dead-end lines or mains.

-Per 30 TAC 290.46(f)(3)(A)(iv) - the dates that dead-end mains were flushed

-Per 30 TAC 290.46(l) - Flushing of mains. All dead-end mains must be flushed at monthly intervals. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title.

**Track Number:** 813747

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.46(j)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to have a means of conducting customer service inspections when the need arises. New metered connections have been added to the water system, though others had been disconnected from the system, and no inspections had been conducted prior to connecting these new connections.

-Per 30 TAC 290.46(j) - Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in commission Form 20699 must be approved by the executive director prior to being placed in use.

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**Track Number:** 813748

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.39(j)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to bring the water treatment plant back up to preapproved status and making changes to the plant prior to obtaining approval. The media in the clarifier, and possibly the filter, do not have to proper proportions of media.

-Per 30 TAC 290.39(j) - Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Significant changes in existing systems or supplies shall not be instituted without the prior approval of the executive director.

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**Track Number:** 813749

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.110(c)(4)(C)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to test chlorine residual in distribution on a daily basis.

-Per 30 TAC 290.110(c)(4)(C) - Public water systems using surface water sources or groundwater under the direct influence of surface water must monitor the disinfectant residual tests at least once per day at representative locations in the distribution system.

**Track Number:** 813750**Compliance Due Date:** To Be Determined**Violation Start Date:** 4/7/2022**30 TAC Chapter 290.42(l)****Alleged Violation:****Investigation:** 1797025

Comment Date: 06/04/2022

Failure to maintain a plant operations manual that is kept up-to-date when changes are made at the plant. There was no plant operations manual available for review during the investigation.

-Per 30 TAC 290.42(l) - Plant operations manual. A thorough plant operations manual must be compiled and kept up-to-date for operator review and reference. This manual should be of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency. If operating a reverse osmosis or nanofiltration membrane system, the manual must also include the system's configuration, baseline performance data, and any set point for membrane cleaning or replacement.

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**Track Number:** 813751**Compliance Due Date:** To Be Determined**Violation Start Date:** 4/7/2022**30 TAC Chapter 290.42(e)(4)(A)****Alleged Violation:****Investigation:** 1797025

Comment Date: 06/04/2022

Failure to ensure that a Self-Contained Breathing Apparatus (SCBA) or supplied air respirator are provided in the event of an emergency pertaining to a chlorine leak.

-Per 30 TAC 290.42(e)(4)(A) - When chlorine gas is used, a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration (OSHA) standards for construction and operation, and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage shall be readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency.

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**Track Number:** 813752**Compliance Due Date:** To Be Determined**Violation Start Date:** 4/7/2022**30 TAC Chapter 290.42(e)(4)(C)****Alleged Violation:****Investigation:** 1797025

Comment Date: 06/04/2022

Failure to ensure that there is both a high level and floor level screened vents in the chlorine room where the 150-pound chlorine cylinder is housed. There are vents located at approximately shoulder height on the outer most walls of the room where the chlorine cylinders are housed, but these are not high level or floor level vents.

-Per 30 TAC 290.42(e)(4)(C) - Adequate ventilation, which includes both high level and floor level screened



vents, shall be provided for all enclosures in which gas chlorine is being stored or fed. Enclosures containing more than one operating 150-pound cylinder of chlorine shall also provide forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current International Fire Code (IFC).

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**Track Number:** 813753

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 6/15/2018

**30 TAC Chapter 290.42(d)(5)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to have a flow rate meter for the disinfection zone, treated water volumetric meter, and a backwash flow rate meter to determine the amount of water that passes through each of these areas of the plant.

-Per 30 TAC 290.42(d)(5) - Flow-measuring devices shall be provided to measure the raw water supplied to the plant, the recycled decant water, the treated water used to backwash the filters, and the treated water discharged from the plant. Additional metering devices shall be provided as appropriate to monitor the flow rate through specific treatment processes. Metering devices shall be located to facilitate use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities.

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**Track Number:** 813754

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.46(s)(2)(B)(iii)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to conduct required calibrations of the two on-line turbidimeters as required at least once every 90 days.

-Per 30 TAC 290.46(s)(2)(B)(iii) - On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.

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**Track Number:** 813755

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 6/15/2018

**30 TAC Chapter 290.42(h)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to have proper sanitary facilities, toilet and hand washing facilities, at the water plant. The only sanitary facilities located at the water treatment plant is a portable toilet that does not appear to have been serviced in a number of years. There is no hand washing area at the plant.

-Per 30 TAC 290.42(h) - Sanitary facilities for water works installations. Toilet and hand washing facilities

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provided in accordance with established standards of good public health engineering practices shall be available at all installations requiring frequent visits by operating personnel.

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**Track Number:** 813756

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 6/15/2018

**30 TAC Chapter 290.42(m)**  
**30 TAC Chapter 290.43(e)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to ensure that there is an intruder-resistant fence around the water plant and water storage tanks. The barbed wire around the top of the fence at both the water treatment plant and around the standpipe is inadequate in places, and not even being present in areas. There is overgrowth of plant life, specifically small trees, growing close to the fence at the water treatment plant that could be used to scale the fence. There are places that have been pushed up to create gaps at the base of the fence around the water treatment plant. The gate of the standpipe also not latched or locked.

-Per 30 TAC 290.42(m) - Security. Each water treatment plant and all appurtenances thereof shall be enclosed by an intruder-resistant fence. The gates shall be locked during periods of darkness and when the plant is unattended. A locked building in the fence line may satisfy this requirement or serve as a gate.

-Per 30 TAC 290.43(e) - Facility security. All potable water storage tanks and pressure maintenance facilities must be installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates. Pedestal-type elevated storage tanks with lockable doors and without external ladders are exempt from this requirement. The gates and doors must be kept locked whenever the facility is unattended.

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**Track Number:** 813757

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 6/15/2018

**30 TAC Chapter 290.42(d)(16)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to have proper supervisory control and data acquisition (SCADA) with remote access away from the water plant. There is a panel where the SCADA for the cone settling tank and clearwell can be reviewed at the water treatment plant at the control panel for the package plant, but this data is not transmitted or recorded anywhere.

-Per 30 TAC 290.42(d)(16) - Each surface water treatment plant shall be provided with a computer and software for recording performance data, maintaining records, and submitting reports to the executive director. The executive director may allow a water system to locate the computer at a site other than the water treatment plant only if performance data can be reliably transmitted to the remote location on a real-time basis, the plant operator has access to the computer at all times, and performance data is readily accessible to agency staff during routine and special investigations.

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**Track Number:** 813758

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.46(f)(3)(A)(ii)(I)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 06/04/2022

Failure to record the amount of water treated and that enters distribution on a daily basis.

-Per 30 TAC 290.46(f)(3)(A)(ii)(I) - Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of water treated and distributed each day.

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**Track Number:** 813759

**Compliance Due Date: To Be Determined**

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.46(f)(3)(A)(i)(I)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 06/04/2022

Failure to record the amount of chemicals used daily to treat surface water.

-Per 30 TAC 290.46(f)(3)(A)(i)(I) - Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of each chemical used each day.

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**Track Number:** 813760

**Compliance Due Date: To Be Determined**

**Violation Start Date:** 6/15/2018

**30 TAC Chapter 290.42(d)(2)(A)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 06/04/2022

Failure to install vacuum breakers at each hose bib located on the side of the clearwell.

-Per 30 TAC 290.42(d)(2)(A) - Vacuum breakers must be provided on each hose bib within the plant facility.

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**Track Number:** 813761

**Compliance Due Date: To Be Determined**

**Violation Start Date:** 1/28/2022

**30 TAC Chapter 290.42(f)(1)(D)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 08/18/2022

Failure to keep all dry chemicals (Alum) stored off of the floor.

-Per 290.42(f)(1)(D) - Dry chemicals shall be stored off the floor in a dry room that is located above ground and protected against flooding or wetting from floors, walls, and ceilings.

**Track Number:** 813762**Compliance Due Date:** To Be Determined**Violation Start Date:** 1/14/2022**30 TAC Chapter 290.46(v)****Alleged Violation:****Investigation:** 1797025

Comment Date: 06/04/2022

Failure to ensure that all electrical wiring is securely installed and in compliance with local and/or national electrical codes. The electrical wiring for the electrical panel was not properly enclosed in a breaker box, and the wiring appeared to be a jumbled mess at that time. The wiring for the control panel is also open and susceptible to coming into contact with water due to the panel being propped open on a nearly constant basis.

-Per 30 TAC 290.46(v) - Electrical wiring. All water system electrical wiring must be securely installed in compliance with a local or national electrical code.

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**Track Number:** 813763**Compliance Due Date:** To Be Determined**Violation Start Date:** 6/2/2022**30 TAC Chapter 290.46(f)(2)****Alleged Violation:****Investigation:** 1797025

Comment Date: 06/04/2022

Failure to provide a response to an information request pertaining to the water operators daily operating notes.

-Per 30 TAC 290.46(f)(2) - The public water system's operating records must be accessible for review during inspections and be available to the executive director upon request.

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**Track Number:** 813764**Compliance Due Date:** To Be Determined**Violation Start Date:** 6/15/2018**30 TAC Chapter 290.42(e)(3)(D)****Alleged Violation:****Investigation:** 1797025

Comment Date: 06/05/2022

Failure to have working scales to denote the amount of chlorine being used on a daily basis. Scales are present but they do not read the amount of weight present in the chlorine cylinder and the operator is unable to determine if the cylinder is full/partially full/empty.

-Per 30 TAC 290.42(e)(3)(D) - Facilities shall be provided for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use.

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**Track Number:** 813765**Compliance Due Date:** To Be Determined**Violation Start Date:** 6/15/2018

**30 TAC Chapter 290.42(d)(12)**  
**30 TAC Chapter 290.46(m)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 06/04/2022

Failure to ensure that there is ample working room around the building housing the water treatment package plant, with good lighting, and proper draining of the floor to prevent water ponding and creating a slip hazard. Water pools on the floor from rain events or if there is a leak in the package plant. A portable light has to be brought to the back part of the building (farthest area from the door) when work needs to be done to the raw water side of the plant, causing for the need of running extension cords along the floor. When the wind blows dust enters through holes in the walls of the building around the package plant, and through gaps between the slab and the metal walls of the building. Excess equipment, piping and tool cause tripping hazards and prevent ease of movement around the package plant.

-Per 30 TAC 290.42(d)(12) - Pipe galleries shall provide ample working room, good lighting, and good drainage provided by sloping floors, gutters, and sumps. Adequate ventilation to prevent condensation and to provide humidity control is also required.

-Per 30 TAC 290.46(m) - Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facilities and equipment. The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.

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**Track Number:** 813766

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.43(c)(4)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 06/04/2022

Failure to ensure that the liquid level indicator located on the side of the clearwell matches the liquid level indicated through the SCADA system, and that the standpipe is equipped with a liquid level indicator. The liquid level indicator on the side of the clearwell does not match the reading that is being transmitted via SCADA on the display screen on the control panel for the package plant. There is no way to determine if there is any water currently in the standpipe, even though the system valved the standpipe off some time in or before 2009.

-Per 30 TAC 290.43(c)(4) - All clearwells and water storage tanks shall have a liquid level indicator located at the tank site. The indicator can be a float with a moving target, an ultrasonic level indicator, or a pressure gauge calibrated in feet of water. If an elevated tank or standpipe has a float with moving target indicator, it must also have a pressure indicator located at ground level. Pressure gauges must not be less than three inches in diameter and calibrated at not more than two-foot intervals. Remote reading gauges at the owner's treatment plant or pumping station will not eliminate the requirement for a gauge at the tank site unless the tank is located at the plant or station.

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**Track Number:** 813767

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 6/15/2018

**30 TAC Chapter 290.46(t)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 06/04/2022

Failure to maintain the ownership sign located on the gate/fencing of the water plant and at the standpipe. The sign located on the fence for the water treatment plant is faded and in need of being updated, since there is no phone number listed in case of emergencies at the plant. There is no ownership sign at all located on the fence around the standpipe of any kind.

- Per 30 TAC 290.46(t) - System ownership. All community water systems shall post a legible sign at each of its production, treatment, and storage facilities. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted.

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**Track Number: 813768**

**Compliance Due Date: To Be Determined**

**Violation Start Date: 6/15/2018**

**30 TAC Chapter 290.42(d)(13)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 06/04/2022

Failure to properly color code piping to indicate type of water flowing through the various pieces of pipe at the water treatment package plant. The piping used at the water treatment plant is all gray PVC piping that is not color coded or marked with banding, it is difficult to determine what is in each of the various pipes or direction of flow.

-Per 30 TAC 290.42(d)(13) - The identification of influent, effluent, waste backwash, and chemical feed lines shall be accomplished by the use of labels or various colors of paint. Where labels are used, they shall be placed along the pipe at no greater than five-foot intervals. Color coding must be by solid color or banding. If bands are used, they shall be placed along the pipe at no greater than five-foot intervals.

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**Track Number: 813769**

**Compliance Due Date: To Be Determined**

**Violation Start Date: 4/7/2022**

**30 TAC Chapter 290.42(f)(1)(A)**

**Alleged Violation:**

**Investigation: 1797025**

Comment Date: 06/06/2022

Failure to ensure that there are enough chemicals in storage to ensure a reliable supply, especially in times of emergency. Bags of dry alum are used to produce the liquid alum that is then injected into the plant for coagulation purposes. These bags are typically kept near the door to the building housing the package plant, but there only a few bags are kept on site for use at any given time. There is no evidence of bulk storage of this dry alum, and there is only a small day tank in use for the running of the package plant.

-Per 30 TAC 290.42(f)(1)(A) - Bulk storage facilities at the plant shall be adequate to store at least a 15-day supply of all chemicals needed to comply with minimum treatment technique and maximum contaminant level (MCL) requirements. The capacity of these bulk storage facilities shall be based on the design capacity of the treatment plant. However, the executive director may require a larger stock of chemicals based on local resupply ability.

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**Track Number:** 813770

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.42(f)(1)(C)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/04/2022

Failure to ensure that the day tank for alum is properly labeled with the chemical contents.

-Per 30 TAC 290.42(f)(1)(C) - Every chemical bulk storage facility and day tank shall have a label that identifies the facility's or tank's contents and a device that indicates the amount of chemical remaining in the facility or tank.

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**Track Number:** 813771

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 4/7/2022

**30 TAC Chapter 290.42(f)(1)(E)(ii)(I)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 06/05/2022

Failure to ensure that containment facilities for the alum day tank can hold a minimum of 110% of the total volume of the container. The day tank used for the liquid alum holds up to 25 gallons, and sits on a secondary containment unit that is approximately 3 to 4 inches high, 10 to 11 inches wide, and 26 to 28 inches long.

-Per 30 TAC 290.42(f)(1)(E)(ii)(I) - Containment facilities for a single container or for multiple interconnected containers must be large enough to hold the maximum amount of chemical that can be stored with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.

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**Track Number:** 813772

**Compliance Due Date:** To Be Determined

**Violation Start Date:** 3/28/2022

**30 TAC Chapter 290.46(m)(4)**

**Alleged Violation:**

**Investigation:** 1797025

Comment Date: 08/18/2022

Failure to prevent the harboring of disease bearing insects (mosquitos) and encouraging other potential disease bearing vectors to gather in and around a fire hydrant. The fire hydrant located just east of the intersection of South Front Street and Concho Street has been leaking from the base of the hydrant since late March 2022 and there is a continuous flow of water coming from the base of the hydrant creating a pond along the edge of South Front Street where wildlife come to drink from and mosquitos are breeding in.

-Per 30 TAC 290.46(m)(4) - All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

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**Additional Issues**

**Description** Item 2

**Additional Comments**

Failure to ensure that all personnel who operate the public water system plant are licensed or are working under the direct supervision of a licensed operator. (This is pertaining to Mr. Ed Puckett operating the plant when Ms. Brandie Baker is not present, and also being the only person besides Ms. Baker to have a key to the water plant).

-Per 30 TAC 290.46(e) – Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director. Except as provided in paragraph (1) of this subsection, all public water systems must use a water works operator who holds an applicable, valid license issued by the executive director to meet the requirements of this subsection. The licensed operator of a public water system may be an employee, contractor, or volunteer.

Signed   
Environmental Investigator

Date 8/18/2022

Signed   
Supervisor

Date 8-19-22

**Attachments: (in order of final report submittal)**

- |  |   |
|--|---|
| <input type="checkbox"/> Enforcement Action Request (EAR)          | <input type="checkbox"/> Maps, Plans, Sketches            |
| <input type="checkbox"/> Letter to Facility (specify type) : _____ | <input type="checkbox"/> Photographs                      |
| <input type="checkbox"/> Investigation Report                      | <input type="checkbox"/> Correspondence from the facility |
| <input type="checkbox"/> Sample Analysis Results                   | <input type="checkbox"/> Other (specify) : _____          |
| <input type="checkbox"/> Manifests                                 | _____   |
| <input type="checkbox"/> Notice of Registration                    | _____   |

- List of Attached files**
- Brandie's Class Confirmation Slips.pdf
  - Information from Brandie 5-18-22.pdf
  - Pictures (Part 2).pdf
  - Drinking Water Watch Summary Sheet.pdf
  - Information from Ed 5-18-22.pdf
  - Pictures (Part 1).pdf
  - Emails.pdf
  - Bacteriological Sample Results.pdf
  - Incident 377262.pdf



# **EXHIBIT D**

**TCEQ Investigation No. 1847563**

PWS\_1950004\_CP\_20220928\_INVESTIGATION  
Texas Commission on Environmental Quality  
Investigation Report

The TCEQ is committed to accessibility. If you need assistance in accessing this document, please contact oce@tceq.texas.gov

**Customer: City of Toyah**  
**Customer Number: CN600665780**

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**Regulated Entity Name: CITY OF TOYAH**

**Regulated Entity Number: RN101225001**

**Investigation #** 1847563      **Incident Numbers**  
386901  
**Investigator:** HEATHER FAIRBANKS      **Site Classification** SW <=50 CONNECTION  
**Conducted:** 09/27/2022 -- 09/28/2022      **No Industry Code Assigned**  
**Program(s):** PUBLIC WATER SYSTEM/SUPPLY  
**Investigation Type:** Compliance Investigation      **Location:** CITY HALL 230 WEST FIRST ST TOYAH  
**Additional ID(s):** 1950004

**Address:** ,

**Local Unit:** REGION 07 - MIDLAND

**Activity Type(s):** PWSCMPL - PWS Complaint  
PWSRECON - PWS Recon- Reconnaissance  
investigation for surface water and  
groundwater facilities.

**Principal(s):**

Role	Name
RESPONDENT	CITY OF TOYAH

**Contact(s):**

Role	Title	Name	Phone
PARTICIPATED IN	OPERATOR	MS Brandie Baker	Work (432) 448-1599
REGULATED ENTITY CONTACT	OPERATOR	MS Brandie Baker	Work (432) 448-1599

**Other Staff Member(s):**

Role	Name
QA Reviewer	VICKIE MCLEAN
Investigator	DOUGLAS WILLIAMSON
Supervisor	RYAN SLOCUM
Investigator	RYAN BERDOZA

**Associated Check List**

<u>Checklist Name</u>	<u>Unit Name</u>
WATER EQUIPMENT	9/28
PWS COMPLAINT INVESTIGATION	386901
WATER EQUIPMENT	9/27
PWS GENERIC VIOLATIONS	NOE

**Investigation Comments:**

**INTRODUCTION**

On September 9, 2022, at 06:07, a complaint was received by the Texas Commission on Environmental Quality (TCEQ) Region 7 via email. The Complainant alleged that the City of Toyah (Toyah) water system has workers at the water plant operating the system without supervision (Attachment 1 - Incident).

**DAILY NARRATIVE**

On September 27, 2022, Investigator Heather Fairbanks, along with Investigators Douglas "Jay" Williamson and Ryan Berdoza, traveled to City Hall in Toyah to check the chlorine residual, pressure and turbidity. The investigators reported a free chlorine residual of 0.08 mg/L, 0.06 mg/L and 0.03 mg/L, a pressure reading of 46 psi, and a turbidity reading of 4.86 NTU and 0.65 NTU. When visiting the water treatment plant, the investigators did not find any personnel working out at the water treatment plant. The investigators did walk the perimeter of the water treatment plant and noticed signs of a water discharge coming from the area where the cone settling tank's drain line leaves the plant yard. Following the course, the discharge runs the investigators found that the water flowed all the way to the seasonal creek to the west of the water treatment plant, this is a violation of 30 Texas Administrative Code (30 TAC) 290.42(i) and Texas Water Code (TWC) 26.121; this violation is being addressed in investigation 1797025. Before departing from the City of Toyah, the investigators met with Ms. Brandie Baker, operator for the City of Toyah, and discussed that Mr. Ed Puckett and another individual had been flushing the water system for her the week prior; but, according to Ms. Baker, Mr. Puckett and the other man had not flushed the system per her standard operating procedures.

On September 28, 2022, Investigator Heather Fairbanks, along with Investigator Jay Williamson traveled to City Hall in Toyah to check the chlorine residual, pressure and turbidity. The investigators reported a free chlorine residual of 0.05 mg/L and 0.04 mg/L, a pressure reading of 50 psi, and a turbidity reading of 0.56 NTU. While visiting the water treatment plant, the investigators found the operator, Ms. Brandie Baker, working out at the plant. Upon further inquiry about the flushing that still needed to take place, Ms. Baker said that it would take till September 29th before flushing could begin.

**EXIT INTERVIEW**

A violation will be issued for failure to maintain the minimum chlorine residual within the distribution system and will be being referred to enforcement.

**GENERAL FACILITY AND PROCESS INFORMATION**

This community system provides treated surface water to 48 metered connections and six recreational vehicle (RV) spaces with estimated retail population of 100 (per system). Mailing address, physical address, location, phone numbers, RN and CN for the system are:

P. O. Box 144                      City Hall  
Toyah, TX 79785-0144

120 West Second Street        City Hall  
Toyah, TX 79785

432/259-3908                    City Hall  
432/259-3908                    City Hall Fax  
432/924-2712                    Mayor Bobby Creamer (cell)  
432/448-0814                    Mayor Pro Tem Naomi Machuca cell  
cityoftoyah1@yahoo.com

RN101225001  
CN600665780

POE 001: POE sampling is from faucet on clearwell.

Water from T & P Lake in the Davis Mountains gravity flows through a maximum 12-inch transmission line 35 miles to Toyah's water treatment plant. Water initially enters the center of a V settling tank and exits to a 175 GPM Pacific-Keystone adsorption-clarifier package plant. Alum is injected into a tube static mixer prior to package plant. Polymer is injected at the static tube mixer only if raw water NTU is greater than 10 NTU. Water is clarified through an upflow roughing filter of four inches of gravel and 42 inches of coarse sand. The clarified water then passes on to the downflow dual media, 24 inches of anthracite and 18 inches of sand over four inches of gravel, rapid gravity filter for final polishing. At some point during the fall of 2017, however, the water was bypassed around the settling tank and package plant, filtered through unapproved cartridge filters before then being chlorinated and sent to the clearwell. Filtered water is pumped to the clearwell and thence gravity flows to distribution. Gaseous chlorination is ahead of clearwell storage. High turbidity raw water causes the plant to shut down. All functions of the package plant are automated with appropriate shut offs. Backwash water is discharged to decant basin and allowed to evaporate. The distribution is gravity fed from the clearwell which also serves as an elevated ground tank. A standpipe, currently out of service and located on southwest side of Toyah, filled at 90 feet and shut off at 104 feet. This provided the system with an additional 24 feet or 0.022 MG of elevated storage.

System Facilities Totals:

Surface Water is purchased from T&P Lake owned by City of Balmorhea. Limited to supply.

Plant is rated at 175 GPM = 0.252 MGD

Elevated Tank Storage = 0.250 MGD

0.250 MG from elevated ground storage (+ 0.022 MG from standpipe when in service)

Total Storage = 0.250 MG (0.350 MG when standpipe in service)

Service Pumps = None = Gravity.

BACKGROUND:

Previous Comprehensive Compliance Investigation was conducted May 20, 2015. Toyah is required to have a B Surface Water licensed operator on-site or readily accessible by telephone with a C Surface Water licensed operator on-site. The system has had the waiver from requirement for a B Surface Water licensed operator revoked per the July 5, 2018, letter that was sent to the City of Toyah by Water Supply Division.

Current Enforcement Actions:

See Compliance History (Attachment 2 - Compliance History)

Agreed Orders/Court Orders and Other Compliance Agreements:

See Compliance History (Attachment 2 - Compliance History)

Complaints:

Incident Number: 386901

Prior Enforcement Issues:

See Compliance History (Attachment 2 - Compliance History)

ADDITIONAL INFORMATION

Conclusions and Recommendations:

A violation will be issued for failure to maintain a chlorine residual above 0.2 mg/L in the distribution system, and this violation will be being referred to enforcement. No other violations were noted at the time of the investigation.

NOE Date: 10/12/2022

**OUTSTANDING ALLEGED VIOLATION(S)  
ASSOCIATED TO A NOTICE OF ENFORCEMENT**

Track Number: 826380

Compliance Due Date: To Be Determined

Violation Start Date: 9/27/2022


30 TAC Chapter 290.110(b)(4)

**Alleged Violation:**


**Investigation: 1847563**

Comment Date: 10/11/2022

Failure to maintain the residual disinfectant above a 0.2 mg/L free chlorine in distribution. The failure to maintain a 0.2 mg/L free chlorine residual in distribution is an alleged violation of 30 TAC 290.110(b)(4). This is a category B18(c)(7) violation (Failure to maintain the required minimum disinfectant residual when disinfectant equipment is available (24 hours)) according to the EIC Revision Number 17.

Signed   
Environmental Investigator

Date 10/12/2022

Signed   
Supervisor

Date 10.12.2022

**Attachments: (in order of final report submittal)**

\_\_\_ Enforcement Action Request (EAR)

\_\_\_ Maps, Plans, Sketches

\_\_\_ Letter to Facility (specify type) : \_\_\_\_\_

\_\_\_ Photographs

\_\_\_ Investigation Report

\_\_\_ Correspondence from the facility

\_\_\_ Sample Analysis Results

\_\_\_ Other (specify) : \_\_\_\_\_

\_\_\_ Manifests

\_\_\_ Notice of Registration

\_\_\_\_\_  
\_\_\_\_\_

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Associated Case Party: STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
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