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1 STATE OF TENNESSEE
2 BOARD OF WATER QUALITY, OIL, AND GAS

3 DEPARTMENT OF ENVIRONMENT DIVISION OF WATER RESOURCES
4 AND CONSERVATION, CASE NUMBER DWS23-0190
5 Petitioner,
6 vs. Docket No. 04.02-244954A
7 TOWN OF TELLICO PLAINS
8 TENNESSEE,
9 Respondent.

-AND-

9 IN THE MATTER OF: DIVISION OF WATER RESOURCES
10 PERMIT #SOP-19004 CASE NUMBER WPC25-0016
11 AQUA GREEN UTILITY, INC.,
12 Petitioner,
13 vs. Docket No. 04.30-252016A
14 DEPARTMENT OF ENVIRONMENT
15 AND CONSERVATION,
16 Respondent.

TRANSCRIPT OF PROCEEDINGS

19 BE IT REMEMBERED that the above-captioned cause
20 came on for hearing on this, the 17th day of February,
21 2026, beginning at 10:02 a.m., before the Honorable
22 Michael Begley, when and where the following proceedings
23 were had, to wit:
24
25 Reported by: MICHAL TOLON, Digital Reporter

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1 APPEARANCES, Cont'd
2 Also Present:
3
4 DART KENDALL, Pro Se
5 Aqua Green Utility Inc.
6 3350 Galts Road
7 Acworth, Georgia 30102
8 865.908.0432
9 dart@aquagreenutility.com
10
11 Dodd Galbreath, Board Chair
12 Dr. John Schwartz
13 Dr. Gary Bible
14 Neal Whitten
15 Elaine Boyd, Commissioner's Designee for the
16 Department of Environment and Conservation
17 Amanda Goff, Commissioner's Designee for the
18 Department of Health
19 Terry Wimberley
20 April Grippo
21 Drake Smarch, Board Secretary
22 Sam Marshall, Commissioner's Designee for the
23 Department of Agriculture
24
25 Shelby R. B. Ward, Counsel for the Board of Water
Quality, Oil, and Gas

Brent Galloway, Attended online

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1 A P P E A R A N C E S
2
3
4 For the Petitioner (Tellico Plains Case):
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1 I N D E X
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4 E X H I B I T S
5 (None marked.)
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P R O C E E D I N G S

(WHEREUPON, the above-captioned matter was heard in open court as follows:)

MS. GRIPPO: Today is February 17th, 2025. We hope that everyone made it in okay to this location here at the Tennessee Tower. And with that, I will pass it over to Chairman Galbreath.

MR. GALBREATH: Thank you, Director Grippo. Welcome, everyone. I'm Dodd Galbreath. This is the Tennessee water quality, oil, and gas meeting on February 17th, 2026. We've got several items of business today. First item of business is to take a roll call. (indiscernible)

MR. SMARCH: Gary Bible. Elaine Boyd.

MS. BOYD: Here.

MR. SMARCH: Kevin Davis. Dodd Galbreath.

MR. GALBREATH: Here.

MR. SMARCH: Brent Galloway.

MR. GALLOWAY: Here.

MR. SMARCH: Amanda Goff.

MS. GOFF: Here.

MR. SMARCH: Sam Marshall.

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MR. MARSHALL: Here.

MR. SMARCH: Frank McGinley. John Swartz.

DR. SCHWARTZ Here.

MR. SMARCH: Neal Whitten.

MR. WHITTEN: Here.

MR. SMARCH: Terry Wimberley.

MR. WIMBERLEY: Here.

MR. SMARCH: Chairman, we have a quorum.

MR. GALBREATH: Thank you, Mr. SMARCH.

Okay. Our next item of the business is to review the board minutes of our last meeting, November 17th. All of you should have received that in your email electronic document packet. I think it was Agent Hat2Vegas (phonetic). Are there any edits or corrections to the minutes? And if there is, please put that in the form of a motion. If there are none, we'll entertain a motion to accept minutes as presented.

SPEAKER 1: Motion to approve as written.

MR. GALBREATH: We have a motion to approve the minutes as written. And do we have a second?

SPEAKER 2: Second.

MR. GALBREATH: We have a second. Is there any discussion? Seeing none, roll call vote. Yes or no.

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MR. SMARCH: Chairman, can I confirm who made that second? Perfect. Thank you. The motion is to approve the minutes. Elaine Boyd.

MS. BOYD: Yes.

MR. SMARCH: Dodd Galbreath.

MR. GALBREATH: Yes.

MR. SMARCH: Brent Galloway.

MR. GALLOWAY: Yes.

MR. SMARCH: Amanda Goff.

MS. GOFF: Yes.

MR. SMARCH: Sam Marshall.

MR. MARSHALL: Yes.

MR. SMARCH: John Swartz.

DR. SCHWARTZ Yes.

MR. SMARCH: Neal Whitten.

MR. WHITTEN: Yes.

MR. SMARCH: Terry Wimberley.

MR. WIMBERLEY: Yes.

MR. SMARCH: Minutes are approved.

MR. GALBREATH: Thank you, Mr. Smarch.

Okay. The next item on the agenda is to go into a administrative hearing. Initial hearing related to -- excuse me. I'm jumping ahead. We need to deal with a chair replacement or an alternate chair question. So we need to hear from our counsel on our various legal

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options concerning how we go about this since our rules appear to be a little vague on this matter.

MS. WARD: Thank you, Chairman. This is Shelby Ward, board attorney. And then also a reminder to all board members, we do have one board member attending remotely. So while we be speak, you'll all have to just say your name first so we can have a clean record and adhere to the laws with respect to remote meetings.

So with the election of an alternate chair, so under the Water Quality Control Act, there is a chair that is supposed to be president to help facilitate board members. And the wording is a little interesting.

And as we know, we have ex-officio members. And so the commissioner is technically the chair of this board. But when you have ex-officio members, they do not serve as chairs. And so Chairman Galbreath is our chair here. And we also wanted to elect an alternate chairperson. So technically two vice chairs. But the point is, someone to facilitate in case Chairman is not here. So that chairman can facilitate this process and to elect an alternate when you're not available.

MR. GALBREATH: Thank you very much. So

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1 everybody understands that the commissioner of TDEC is
2 the formal chair and he's not here. I serve as chair.
3 So we're looking for an alternate chair for when I can't
4 (indiscernible). All right. So typically what we do is
5 we take nominations from board members or nominees to
6 serve as the ultimate chair. Any board member, even
7 commissioner designees, can nominate someone. You just
8 can't nominate yourself or be nominated if you're a
9 designee by your commissioner as was stated.
10 So who would like to be a harder worker
11 on the days I'm out of here? Or who would like to put
12 that person in the hot seat's more appropriate.
13 MS. BOYD: Mr. Chairman, I'd like to
14 nominate Terry Wimberley.
15 MR. GALBREATH: Is there a second or
16 (indiscernible)?
17 DR. SCHWARTZ: Second it.
18 MR. GALBREATH: Any other nominations?
19 MR. SMARCH: Can you please confirm again
20 who made that second? Thank you.
21 MR. GALBREATH: Dr. Schwartz.
22 MR. SMARCH: The motion is to approve
23 Terry Wimberley as vice chair of the board. Elaine
24 Boyd.
25 MR. GALBREATH: (indiscernible). Are you

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1 going to accept the --
2 MR. SMARCH: Elaine Boyd?
3 MS. BOYD: Yes.
4 MR. SMARCH: Dodd Galbreath.
5 MR. GALBREATH: Yes.
6 MR. SMARCH: Brent Galloway.
7 MR. GALLOWAY: Yes.
8 MR. SMARCH: Amanda Goff.
9 MS. GOFF: Yes.
10 MR. SMARCH: Sam Marshall?
11 MR. MARSHALL: Yes.
12 MR. SMARCH: John Schwartz?
13 DR. SCHWARTZ: Yes.
14 MR. SMARCH: Neal Whitten?
15 MR. WHITTEN: Yes.
16 MR. SMARCH: And Terry Wimberley.
17 MR. WIMBERLEY: Yes.
18 MR. SMARCH: Terry Wimberley is now the vice
19 chair of the board.
20 MR. GALBREATH: If you'll see me after
21 the meeting, I'll give you an inside speech.
22 MR. WIMBERLEY: Yeah.
23 MR. SMARCH: Mr. Chair, If I may, to
24 remind the board to please turn on their mics. Speak so
25 you can be heard virtually. Thank you.

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1 MR. GALBREATH: So now we're ready for
2 our judicial hearing. We have Judge Michael Begley.
3 MS. WARD: Oh, sorry, Chairman. The
4 conflict of interest slide is a representation.
5 MR. GALBREATH: Sorry. I guess I'm eager
6 to get on with (indiscernible). So all of you should
7 have received a document to verify that you have no
8 conflict of interest. I know, I signed mine and emailed
9 it back. Is there anyone here who has not signed that
10 document and forwarded it back to the board attorney?
11 MS. WARD: So I can double-check. This
12 is Shelby Ward again, the board attorney. Let me
13 double-checking (indiscernible) everyone. I believe
14 everyone here has sent me the form. So thank you. I
15 sent the form individually to each board member and it
16 is the same conflict of interest statement that is in
17 the board manual which is available on the website for
18 the board of water quality, oil, and gas.
19 And this is housekeeping. Some of you
20 have -- well, all of you have already signed it before.
21 So just housekeeping to have a newly signed copy. And
22 the slides here are just portions of the statement and
23 we'll just review them briefly.
24 So as I mentioned before, the purpose of
25 all of this is just housekeeping on conflict of

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1 interest. And in this slide deck, I wanted to share the
2 executive board regarding ethics. And so that's just
3 something that's a broader statement considering the
4 governor's importance with respect to ethical conduct
5 from the executive branch. And then there are slides
6 with respect to particular sections of the conflict of
7 interest statement.
8 And then I already got folks' conflict of
9 interest statement signed via Adobe Sign. So you've
10 already handled that portion. So on January 24th, 2019,
11 there was an executive order from the governor with
12 respect to ethics and it applies to all executive branch
13 employees. So employees of TDEC and other folks that
14 work in the executive department. And it just
15 establishes a comprehensive ethics policy to ensure that
16 public trust in government is supported and to ensure
17 proper government performance.
18 So with respect to board function, no
19 member of the board who receives a significant portion
20 of his or her income directly or indirectly from permit
21 holders should have any decision with respect to appeals
22 of permits. And so this is a statute. It's also part
23 of a conflict of interest statement. And any board
24 member subject to disqualification for bias, prejudice,
25 or any other cause may be disqualified in the same way

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1 that a judge would.

2 Concerning appearance of impropriety,

3 each board member shall avoid any action, whether or not

4 specifically permitted by a law, which may result in the

5 appearance of using public office for private gain,

6 losing complete independence or impartiality, making

7 government decision outside of official channels, or

8 affecting adversely the conflict of the public and the

9 integrity of the government.

10 With respect to use of information, no

11 board member shall directly or indirectly use, disclose,

12 or allow the use of official information which was

13 obtained through or in connection with his or her

14 appointment to the board which has not been made

15 publicly available for the purpose of furthering private

16 interest or personal profit of any person. And then

17 board members also are prohibited from engaging in

18 financial transactions as a result of information that

19 they learn from being a board member.

20 With respect to use of property, no board

21 member shall use facilities, equipment, personnel,

22 supplies of the state for private use or gain unless

23 it's for (indiscernible) or if its use is available

24 generally to the public.

25 With respect to avoiding conflicts of

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1 interest and disclosure, each board member will avoid

2 all known conflicts of interest and they will also

3 disclose conflicts of interest to the other board

4 members, administrative law judge, or any other

5 appropriate persons, will further recuse himself or

6 herself for participating in considerations of matters

7 with respect to board decisions.

8 Family and business relations. No board

9 member will participate in decisions or actions

10 involving individuals in his or her immediate family,

11 individuals employed by the board member with respect to

12 their business or any other matter in which the board

13 member's participation may create the appearance of bias

14 or injured bias. And with interpretation questions

15 folks have and board members, please seek my counsel.

16 And so that is also a part of how we will handle any

17 conflicts of interest.

18 So are there any questions from the board

19 with respect to the statement? (indiscernible).

20 MR. SMARCH: No, ma'am.

21 MS. WARD: Thank you everyone.

22 MR. GALBREATH: Thank you, Counselor

23 Ward. All right. Now the moment that I've been so

24 eager to get to. (indiscernible) I just assumed the

25 (indiscernible) in process, we will direct this stuff to

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1 court. Welcome, Your Honor.

2 THE COURT: Yes. Thank you. And thank

3 you to everyone. And for those of you that -- well, I'm

4 sure all you actually have experience with this. You

5 have to always look embarrassingly weird to make sure it

6 gets into the mic really well just like I'm doing. So

7 this helps our people online. And thank you all for

8 going through your processes regarding conflicts of

9 interest. That saves me time as well. That's part of

10 my (indiscernible) in charge.

11 Let me do say good morning to everyone in

12 the room. Morning, board members, Mr. Chair. Thank you

13 all for your time. I want to briefly announce our first

14 matter and I will give a short explanation to the board.

15 Many of you are already familiar with this process. But

16 a couple of things before we get started, just from a

17 housekeeping standpoint, I want our hearing to be as

18 efficient and comfortable for everyone as possible.

19 The board has a lot of information that

20 has already been sent to them. Hopefully they've been

21 able to read through that prior to the trial here. What

22 I'm going to do is ask everyone to do the phone dance

23 and put it on silent if you haven't. Making sure mine

24 is so I'm not that guy. If anyone here needs a break,

25 any sudden reasons, I'm here to help you and make sure

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1 we can do that.

2 I will let counsel for both parties kind

3 of take the lead on the order. But essentially what

4 we're going to be doing is each side is going to give

5 the board kind of a brief argument, surmising briefs

6 that you've read, the information that you've been

7 given. We will decide if we do or do not

8 (indiscernible) rebuttals from there. And then I'll get

9 to the board for your deliberations, questions.

10 As you are aware, this is an open

11 meeting. So we want to be sure that everything that we

12 talk about is open and all direct before the public. If

13 we do need to take a break or a recess, I will ask that

14 we don't talk about the case on that break or in that

15 recess. I'm going to announce the first matter at this

16 time. It's Department of Environment and Conservation

17 v. Town of Tellico Plains. The docket number here is

18 04.02-244954J.

19 Will counsel for both parties

20 (indiscernible) standing or sitting? On that note, feel

21 free to sit, stand, move about freely. As long as the

22 board's comfortable with it, I'm comfortable with it.

23 So you all announce yourselves, please.

24 MR. QUIST: My name is Brian Quist. I'm

25 an attorney of Knoxville. I represent the Town of

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1 Tellico Plains.
2 MS. BULLER-YOUNG: My name is Samantha
3 Buller-Young. I represent the Department.
4 THE COURT: Thank you both. And I
5 believe -- I could be wrong but I think if we get --
6 it's either four or five people trying to turn this on
7 at the same time. You get a flash. That means your mic
8 will work. So when you stop talking make sure you turn
9 it off. That'll help us all. But if you see a flash,
10 you'll know that we have too many on. With that, Mr.
11 Chair, any questions for me? You already established
12 that you have a quorum so we don't need to do that. Any
13 questions, members of the board?
14 We may have some -- we may have some
15 questions when we get to the point of having to make a
16 decision.
17 THE COURT: Yeah. Absolutely. Okay.
18 And I'll allow you to ask questions of counsel when they
19 finish their respective arguments. Counsel, do either
20 of you all have questions?
21 MR. QUIST: No, Your Honor.
22 MS. BULLER-YOUNG: No, Your Honor.
23 THE COURT: With that, I believe there's
24 been an agreement. Mr. Quist will be giving his
25 argument first. So again, if you'd like to sit, stand,

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1 it's your world. We'll go ahead and get started. And
2 don't forget the mic.
3 MR. QUIST: Given the choice, I guess I
4 prefer to sit down if that's okay. I prefer to sit down
5 if that's okay. Greetings. By way of introduction,
6 again, I'm Brian Quist. I represent the Town of Tellico
7 Plains. I would like to reserve any of my
8 (indiscernible) time for rebuttal, if I may. In this
9 appeal, the town has raised many issues, enough to fill
10 65 pages worth of issues.
11 Today, we're here to review the order and
12 assessment. I think that means you're supposed to look
13 at it from scratch and to make up your own mind about
14 whether it's issued properly and for the right reasons.
15 Okay? TDEC counsel is expected to assert it because
16 Judge Garland who wrote the initial order decided this
17 fact or that fact (indiscernible). And that's
18 interesting. But that doesn't mean it's true.
19 I think you are to separately look into
20 the record to make up your own mind about what facts
21 are. Okay? And what proves that point is there's a
22 technical record what happened. And we testified
23 (indiscernible). All right. So the first issue I have
24 raised is this (indiscernible). Really interesting
25 because what TDEC is doing with these assessments and

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1 what we are doing now in this hearing and what I will be
2 (indiscernible) to you in the appeal to the
3 (indiscernible) at this hearing, it's unconstitutional.
4 It just is.
5 Administrative law is no longer what
6 anybody's wanting for us because of the United States
7 Supreme Court ruling. And that's presented
8 (indiscernible). This presents an existential threat to
9 TDEC. (indiscernible). It's not \$4,000 in this case.
10 It's clashed egos whether this is constitutional and
11 whether TDEC followed their own rules.
12 In a nutshell, it is the law which TDEC
13 is not following, that the executive branch cannot
14 decide the town owes a debt. Enforce the debt in the
15 executive branch, have the executive branch confirm the
16 debt, and then prohibit the separate judiciary from
17 fully deciding whether the debt is owed according to the
18 judiciary's own rules. This violates the doctrine of
19 separation of powers. We all learn that in
20 (indiscernible). Didn't we? Separation of powers.
21 What's happening is wrong. But TDEC is
22 doing it anyway. Though the product of a modern
23 statute, the TDEC assessment for money, it's a debt. A
24 debt for money is private rights common law claim for
25 money which according to our United States Supreme Court

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1 can only be decided in a separate judiciary. Our United
2 States Supreme Court says so. I'm not smart enough to
3 make this stuff up but I wrote 21 pages about it because
4 it's a big deal under our state constitution and federal
5 constitution. All right.
6 Another issue I have raised is problems
7 with the order and assessment itself. Now, regardless
8 of whether this board can or should follow the state and
9 federal constitution to begin with, the proof in this
10 matter was that TDEC was not required to issue this
11 order and assessment. It had discretion to do so. That
12 means TDEC needed a proper reason for issuing the order
13 and assessment.
14 So the first step you must determine is
15 TDEC's reason for issuing the assessment. In other
16 words, if you're not required to do something and you
17 have discretion to do something, to review that
18 discretion, you have to ask, why did you do it? Okay?
19 I think everyone knows that when you go into that
20 analysis, if you can find the stated reason for taking
21 the action before the action is taken, that's the real
22 reason, isn't it, why the action was taken?
23 The so called reasons that may spew
24 (indiscernible) getting caught, that falls into the
25 realm of excuses. Thus TDEC's reason for issuing the

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1 assessment, predating the assessment itself, we have
2 that in this case and it's captured in the email from
3 TDEC's Tom Moss dated January 18th, 2024 which is
4 (indiscernible). And Tom Moss is the guy at TDEC who
5 write assessments. That's all he does. (indiscernible)
6 this Hearing Exhibit 9.

7 And I got to tell you, in my entire
8 practice of law, I have never seen a smoking gun email
9 like this. When I found it, it was like, "Oh my God.
10 Really?" And it's showcased in my brief. And it goes
11 like this. All right. So the record shows that at this
12 point in time TDEC is thinking, "Well the town's ETT
13 score is kind of high. We're required to issue the
14 assessment." That's an infallible reason. It turned
15 out that it was wrong.

16 The ETT score was not above the
17 threshold. They're not required to issue an assessment.
18 (indiscernible) unless there's some special fact.
19 Right? They're not required to do it. Then why are you
20 doing it? You know, (indiscernible) why we're doing it.

21 Mr. Moss in his email states, "I have
22 discussed Tellico claims with Jessica," who is Jessica
23 Murphy, (indiscernible) head of compliance. "Even
24 though they are off the hook on this one with EPA, she
25 still wants me to do an order since they really haven't

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1 fixed anything." And again, as I mentioned, it was
2 like, "Oh, my God," because by that moment in time on
3 January 18th of 2024, the town (indiscernible)
4 everything.

5 Just because a violation exists doesn't
6 mean you do an order and assessment. And I'll talk
7 about that in a minute. But these are one off
8 violations. They're one off violations. And a lot of
9 them weren't even violations (indiscernible) -- excuse
10 me, TDEC (indiscernible). But what I'm sharing is that
11 there was nothing to fix at that point. It had already
12 been fixed. And so the proof of the hearing was long
13 before January 18th. TDEC -- excuse me, the town had
14 fixed everything. And at the contested hearing, Jessica
15 Murphy admitted this.

16 In cross-examination of Ms. Murphy, I
17 said, "Violation 1. By the time of the assessment, that
18 was fixed?" "Yes." "2, 3, it was fixed?" "Yes, yes,
19 yes." And all of that's in my brief. And your reason
20 for doing this is false. It's not true. Okay? If your
21 reason is false, it's a lie. Deciding to issue an
22 assessment based on a lie, gosh, it just seems wrong.
23 It's the epitome of arbitrary and capricious. Isn't it?
24 And we're not supposed to do things based
25 upon being arbitrary and capricious. Now, I guess this

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1 is normal for TDEC, TDEC abusing power based on a lie.
2 But I don't think that should be normal for government.
3 I don't think that should be normal for this board. If
4 it is, what do we all stand for? Another issue with the
5 assessment is that TDEC did not follow its own rules.
6 TDEC has rules about this sort of thing? Of course they
7 do. It's a bureaucracy.

8 I've got something called the uniform
9 guide. And the uniform guide is the roadmap. And I've
10 covered all that in my brief. But according to TDEC's
11 own rules, at a basic level, assessments are supposed to
12 be issued against serious violators, mainly to bring
13 about compliance. Because if you're not complying and
14 you get a big fine, it's because you need a kick in the
15 pants. You need a kick in the pants to comply. And
16 that's the purpose.

17 So again, it's not that you committed a
18 violation, because TDEC could, if it wanted to, it could
19 set up a regime where commit a violation, pay some
20 money, commit a violation, pay some money. No. The
21 uniform guide said this is altruistic reason, this is
22 altruistic purpose, to bring about behavior
23 modification. That's why you're doing these
24 assessments, to get people to comply.

25 You got some rogue water systems out

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1 there. Give them an assessment. Kick in the pants,
2 make them comply. the town had already complied. The
3 record is chock-full of the town's good faith effort of
4 complying. It went through a difficult point with some
5 of these violations. It lost its certified operators
6 all at once. Imagine having to replace four certified
7 positions all at once. So some violations occurred. It
8 didn't happen before, haven't happened since. TDEC's
9 uniform guide is Hearing Exhibit 35.

10 And again as I mentioned, many of the so
11 called violations -- because there was a bunch of
12 violations in the assessment that weren't even true.
13 TDEC agreed, withdrew them, then we went to battle on
14 the remainder. All right?

15 And as mentioned, these are one time, one
16 off violations that got fixed long before the assessment
17 was issued in March. And Everybody knew it. Mr. Moss
18 knew it. Ms. Murphy knew it. Everybody knew it. Mr.
19 Moss said he never gave a deposition before. I don't
20 think TDEC's ever been challenged on this, that you're
21 not following your own rules. I don't think they've
22 ever been challenged on that.

23 As a professional it's one thing, but as
24 a citizen, when I look at all this stuff, what the town
25 has been through, having to fight with TDEC for what's

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1 right, I mean the whole thing is -- it's kind of
2 insulting. It's as insulting as it is ridiculous. Now,
3 the case isn't about the \$4,000 of the upfront penalty.
4 The case is about what's right. The statute cited in my
5 brief allows the town to be reimbursed for its costs.
6 Those are called respondent's costs and there's a
7 statute. And the town spent some money on this.
8 There are some criteria in my brief about
9 the wording respondent's costs. There are several
10 criteria, one of which is harassment. My goodness. If
11 you are bringing an assessment against the water system
12 unnecessarily based on a lie, isn't that harassment?
13 What else could harassment be? the town hasn't fixed
14 anything but we're going to. the town has fixed
15 everything. But we're going to do it anyway. We're
16 going to do it anyway. My goodness.
17 But the town asked for its respondent's
18 costs through the time that a motion was filed and as
19 set forth in that motion through when it all ends as
20 amended. An interesting thing is Judge Garland awarded
21 TDEC its costs. This was an error because one, the
22 damages claimed, those were the secretary of state's
23 costs, not TDEC's costs. And Judge Garland relied on
24 the wrong rule of civil procedure. He missed it. It
25 happens.

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1 But if anyone cares about getting it
2 right, that should be set aside. Based on the record,
3 how can secretary of state's cost beat TDEC's damages?
4 There's nothing in the record that supports that.
5 Further, for the life of me -- now, what happened in
6 this initial order? Judge Garland agreed with me that
7 TDEC on this whole contingent penalty thing -- and the
8 contingent penalty thing, that's TDEC's big stick.
9 Right? Water system. You're going to be under our
10 thumb for the next whatever, two years, whatever.
11 If you don't toe the line, you're going
12 to owe more money maybe than what was in the assessment.
13 Those are the contingent penalties. Well, Judge Garland
14 agreed with me that that is wrong. It violates due
15 process. That's 80 percent of what TDEC was about in
16 this whole thing. For the life of me, TDEC losing 80
17 percent of your case, how are you the prevailing party?
18 I can't imagine calling up my client.
19 Client says, "How did court go today?" "Well, we lost
20 80 percent of what we were trying to do. But I guess we
21 won." Right? No. Oh, well. Anyway, I've heard the
22 argument that maybe this board can't decide
23 constitutional issues.
24 Well, if you like, don't decide that.
25 Just resolve that you're not going to participate in an

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1 unconstitutional process. Vacate the order. Don't tell
2 TDEC to do it right and award us our respondent's costs.
3 Just decide that TDEC should follow its own rules on
4 issuing assessments and that issuing assessments based
5 on a lie should not be tolerated. So the town asks that
6 you vacate the order and assessment, award the town its
7 respondent's costs and send the message to TDEC to
8 behave and follow its own rules, or not.
9 It all depends on what message you want
10 to send. After all this, this is your board. It's not
11 my board. This is your board. Those are TDEC's rules.
12 They're not my rules. the town just asked that TDEC be
13 made to follow its own rules. I wrote 65 pages about
14 it. And that's all.
15 THE COURT: Thank you. Mr. Chair, I
16 guess I'll give you the opportunity to decide how you
17 all would like to ask your questions. If you'd like to
18 ask now and then ask the TDEC's counsel after or both
19 after they're finished. Entirely up to you.
20 MR. GALBREATH: It's been our practice in
21 the past to kind of take it one at a time --
22 THE COURT: Sounds good.
23 MR. GALBREATH: -- questions.
24 THE COURT: Go right ahead if you all
25 have questions.

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1 MR. GALBREATH: Does any board member
2 have any questions at this point (indiscernible)?
3 MR. WHITTEN: This is Neal Whitten. One
4 of the questions I have in reading your briefs is, you
5 said there's discretion and your client had fixed
6 everything. Part of my understanding as a permittee has
7 been that part of the reason the fines exist is for
8 deterrence. So if I violated my permit significantly
9 over a long period of time and they came with an order
10 but I fixed everything before it was final, why should I
11 comply if there is no deterrence for violating my
12 permit?
13 MR. QUIST: Yes. I can answer that. I
14 have given that plenty of thought. Again, the mission
15 of the uniform guide is not if a violation occurs, you
16 owe some money. Deterrence can be important. So the
17 question is what was there about what the Town of
18 Tellico Plains was doing in August and September of 2023
19 that required deterrence? I can imagine a situation
20 with a rogue operator who just doesn't care, doesn't
21 care about the rules, doesn't care about compliance, is
22 habitually violating the same rule over and over and
23 just doesn't care, snubbing their nose.
24 I think not only do you need a kick in
25 the pants but you need some deterrence. So this isn't

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1 about getting cute and the night before the assessment
2 that's at issue fixing everything and getting cute and
3 saying, "Oh we fixed everything. You don't have to fine
4 me." the town didn't do that. the town lost its
5 operator that held all four certifications in July of
6 2023, according to TDEC's own witnesses, exercised the
7 utmost good faith to resolve everything.

8 No certified operator, there's going to
9 be a violation that occurs. Could TDEC have told us,
10 "Oh, by the way, you can go to the contractor board to
11 get an extension"? They didn't tell us that. It would
12 have been nice. My point is, for deterrence, there has
13 to be a certain special something. There has to be
14 something special that your rogue operator needed to be
15 deterred from doing this again. These violations didn't
16 happen.

17 These Safe Drinking Water Act violations
18 didn't happen before. They didn't have any sense. the
19 Town of Tellico Plains is a good citizen. They don't
20 need to be deterred. They comply with the Drinking
21 Water Act. They do it because that's what you're
22 supposed to do. So deterrence is not needed.
23 Theoretically, can I imagine a settlement of facts where
24 deterrence would be appropriate? Sure. Not these
25 facts.

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1 MS. GOFF: Amanda Goff, member of the
2 board. My question is did the town have standard
3 operating procedures that they had given to TDEC that
4 they knowingly violated within this or that they
5 deviated from? Did they address those ahead of time?
6 Did the town go to TDEC and say, "Hey. We're having
7 this problem. We've lost all these operators. Can you
8 please work with us to see what we can do?"

9 MR. QUIST: Well, of course. And that's
10 indirectly. But that was answering the second part of
11 your question. First part of your question about
12 standard operating procedures -- and in my view, that
13 term is a document that's internal -- that was not an
14 issue in our case.

15 The standard operating procedure that is
16 not written is to comply with the Safe Drinking Water
17 Act, comply with the regulations, do the monthly
18 operating report. You're supposed to do all those
19 things anyway. Do they have a separate piece of paper
20 that says do all those things anyway? I don't know. It
21 was not an issue in our case. But the second part of
22 your question, which is as soon as the town is rendered
23 without Robert Patty who held all four licenses, there
24 was communication with TDEC.

25 TDEC was very helpful in supplying

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1 information about how to find an operator. Tellico
2 Plains is out in the middle. Well, I started to say out
3 in the middle of nowhere. Well, now that's a terrible
4 thing to say. It's remote. Tellico Plains is in a
5 remote place to get a certified operator to come to
6 Nashville with all of its trappings.

7 It could be easy getting certified
8 operators to come to the Town of Tellico Plains to set
9 up shop. It took some time. And I was mortified to
10 find out later all the town had to do was apply to the
11 contractor board and you can get a 180-day extension.
12 And based on documents and the record, TDEC has to honor
13 that. That spoke to the sense of urgency. I hope that
14 answered your question.

15 MS. GOFF: Yeah. I guess where I was
16 going with that is when they have a standard operating
17 procedure and they're documenting the levels where
18 equipment isn't operating properly and things of that
19 nature, is the town holding itself accountable so that
20 TDEC can then hold them accountable?

21 MR. QUIST: Short answer. That was not
22 an issue in the case. I don't know that they have a
23 separate piece of paper. The things that you described
24 are supposed to do that anyway. And the town did the
25 best it could. Bear in mind, and as I put in my brief

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1 over and over again, the town's source of drinking water
2 is pure groundwater. The EPA doesn't even require that
3 you treat it. It's so pure. The state requires that
4 you treat it, and so it's treated. There's a drinking
5 water act, and you try to comply.

6 Part of the uniform guide speaks to
7 clobber the town with penalties based upon harm to the
8 public -- potential harm to the public. Tellico Plains
9 is a pretty good situation. Its drinking water is pure.
10 If you fail to send in a piece of paper to TDEC, that
11 doesn't matter about the drinking water. There's no
12 increase in harm to the Public, which is one of my
13 favorite violations. How on earth was not sending in a
14 piece of paper to the department going to increase
15 potential harm to the public? I digress. I'm sorry.

16 MR. GALBREATH: Ms. Ward.

17 MS. BOYD: (indiscernible)

18 SPEAKER 1: The statement that
19 (indiscernible) doesn't require treatment in groundwater
20 is not actually correct.

21 MR. GALBREATH: (indiscernible)

22 DR. SCHWARTZ: Yes. It's not exactly
23 correct. I mean, you don't have to do flocculation and
24 other forms treatment but you do have to chlorinate.

25 Part of the issues was the violation, is what I recall

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1 reading the documents, was a failure to sample chlorine
2 residual in the distribution system, which then affects
3 public health. And so that's where the city probably
4 failed and compromised public health. But I just wanted
5 to clarify that there is treatment. It's chlorination
6 that's required.

7 MR. QUIST: Thank you, sir. I am kind of
8 limited to what's in the hearing record. And your
9 points are well taken. Thank you.

10 MR. GALBREATH: Ms. Boyd has a question.
11 MS. BOYD: Yes. I just want to confirm
12 something I read somewhere in the record that TDEC began
13 advising the town about the need for a succession plan
14 when they got down to one certified operator well before
15 the town chose to fire the single certified operator
16 they had. Is that the case?

17 MR. QUIST: Well, the town was not being
18 fined for not having a succession plan. The concept of
19 a succession plan came up at trial, not as an issue in
20 the case. But as a practical matter, it's a truism.
21 Right? You should be thinking about a succession plan.
22 And the town was vulnerable when one person held all
23 four licenses. What if he got hit by a bus? There's
24 some issue about why he left and whether that was the
25 town's fault for firing him.

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1 But frankly, if you're going to fire a
2 guy that has all four certifications, there might be a
3 reason for that. But I digress. But my point is that -
4 - hey, good idea to have a succession plan. I'm the
5 leader of my law firm, Quist, Fitzpatrick & Jarrard.
6 And if I get hit by a bus, I don't know what anybody's
7 going to do. We ought to have a succession plan. Yes.

8 So, yes. Lesson learned. Don't put your
9 eggs in one basket, or not. But we didn't get fined for
10 not having a succession plan. And the thing about
11 certified operators, if we had only known that you could
12 ask the board for an extension of time for up to 180
13 days, that would have been sweet.

14 MR. GALBREATH: Any other board members
15 with a question? Your Honor.

16 THE COURT: Thank you. Okay. Counsel
17 for the department, sit or stand, entirely up to you.
18 If you'd like to make your argument, please do.

19 MS. BULLER-YOUNG: Sure. I'll stand just
20 so I can see everyone. Can everyone hear me?

21 MS. GOFF: I think it's on.

22 MS. BULLER-YOUNG: Thank you, Mr.
23 Chairman, Judge Begley. Good morning, members of the
24 board. My name is Samantha Buller-Young and I represent
25 the department, the petitioner in this case. In March

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1 of 2024, the department issued an administrative
2 enforcement order against the Town of Tellico Plains for
3 drinking water violations that occurred at the town's
4 water treatment plant in the summer and fall of 2023.

5 And the department is here today
6 defending its enforcement decision and civil penalty
7 calculation, which was done lawfully and appropriately
8 in the regular course as part of the department's duty
9 to safeguard the drinking water of Tennessee. I want to
10 use my time with you all today to briefly explain two
11 things. First, why the department appealed two narrow
12 issues in Judge Garland's initial order even though he
13 largely decided in our favor. And second, why this
14 board should not grant the town the relief it seeks on
15 appeal.

16 So let me start by summarizing the
17 initial order, which you all should have in front of
18 you. The contested case hearing in this case took place
19 last June in Knoxville over the course of two full days.
20 As you all know, a contested case hearing is a trial-
21 like proceeding. This one took place in a conference
22 room. It included the testimony of eight witnesses and
23 43 hearing exhibits.

24 Upon his review of all the evidence in
25 the case, administrative Judge Garland put down his

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1 decision. That's the initial order that is before you
2 for your review today. Now, Judge Garland had
3 previously ruled before trial that there were no
4 material facts in dispute with respect to the fact that
5 the town had committed violations of the Safe Drinking
6 Water Act, which I'm going to refer to today as SDWA for
7 short. The trial was limited to whether the
8 department's assessment of civil penalties and damages
9 was appropriate.

10 In the initial order, Judge Garland found
11 that the overall assessment of civil penalties was
12 appropriate and lawful. That's on page 15 of the
13 initial order. For those of you following along. Judge
14 Garland found that the department had proven by a
15 preponderance of the evidence that the assessment of
16 civil penalties was lawful and appropriate given the
17 severity of the violations.

18 Now, if you look at page one of the
19 initial order, you'll see that it says the civil penalty
20 is affirmed in part and modified in part. Let me
21 explain that. Before we got to trial, the department
22 elected to voluntarily drop three of the violations that
23 were originally alleged in its enforcement order. So 12
24 violations remained, to be clear. And this is described
25 in the department's motion for summary judgment, which

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1 is in the certified technical record that was provided
2 to you all ahead of this hearing this Morning.
3 And when I reference the record today,
4 I'm referencing that blue bates number at the bottom
5 left-hand side of the PDF. Specifically, in the
6 footnotes on record page 390, the department explains
7 that it is not pursuing three violations or the damages
8 amount. It is also explained by Judge Garland at page
9 10 of the initial order, which you do have in front of
10 you. So that is why the initial order reduces the total
11 civil penalty to \$22,830, because those three violations
12 were taken off.
13 So that is the total civil penalty amount
14 that the department sought at trial. And that is the
15 amount that Judge Garland agreed was calculated
16 appropriately and lawfully. So today, when I speak
17 about the total civil penalty, I'm talking about that
18 \$22,830 figure. All right. Now that I've summarized
19 it. I'd like to explain the department's position with
20 respect to the initial order. The department largely
21 agrees with Judge Garland's initial order but we assert
22 that it is mistaken in two respects.
23 First, the initial order voids corrective
24 action item 3. That was a mistake because corrective
25 action item 3, the directive to submit SOPs, that is a

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1 valid corrective action that's authorized by the SDWA.
2 Second, the initial order voids the remainder portion of
3 the civil penalty. But that is also a mistake because
4 it is inconsistent with the initial order's finding that
5 the total civil penalty was correctly calculated and not
6 arbitrary in capricious.
7 So I want to be upfront that what the
8 department is asking you all to do today is a little
9 nuanced. This is not a straight up or down vote to
10 approve or deny the initial order. But I hope to make
11 it simple for you in this argument. The department is
12 asking the board to leave most of the initial order in
13 place but to modify the initial order to reinstate
14 corrective action item 3 and the remainder portion of
15 the civil penalty. Let me zoom out for a moment for the
16 larger context.
17 The division of water resources issues
18 these administrative enforcement orders when water
19 systems violate the drinking water rules. The division
20 has authority to do that under the SDWA. And the SDWA
21 tells us that these administrative enforcement orders
22 can assess civil penalties and can require corrective
23 action. Civil penalties are pretty straightforward.
24 They are essentially fines like speeding tickets.
25 Corrective actions are requirements to do something.

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1 So, for example, all right, water system,
2 you've committed these violations. Please give us your
3 chlorine sampling data for the last year. Or please do
4 a study in your distribution system to figure out why
5 you're losing pressure in below 20 psi. Right? Things
6 like that. That's what the enforcement order in this
7 case did. It assessed civil penalties and required
8 corrective actions. You can see that in the order and
9 assessment section, which is in the certified technical
10 record at record page 16. All right.
11 Back to our two requests for this board
12 for relief. First, the department wants this board to
13 amend the initial order to clarify that paragraph 16,
14 roman numeral 16, XVI, item 3 of the enforcement order.
15 I'm making reference to the department's enforcement
16 order here. That item 3 is a valid corrective action.
17 If you're following along using the technical record,
18 item 3 is on record page 17. This is what required the
19 town to submit standard operating procedures, including
20 procedures specific to grab sampling.
21 While the department does not concede
22 that the order's corrective action compliance
23 requirements violate due process, we aren't challenging
24 that part of the initial order because frankly, the town
25 is already required to comply with those directives.

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1 Corrective action items 4 through 7 basically reiterate
2 what the town is already required to do under the
3 drinking water rules. But what we would like you to
4 hold today is that item 3 is different from items 4
5 through 7.
6 The other corrective actions from the
7 enforcement order are structured in the negative, "Don't
8 commit a future violation." But item 3 imposes an
9 affirmative obligation, "Submit SOPs." And that
10 affirmative obligation must be taken within a definite
11 time frame, 60 days in this case.
12 This type of corrective action is
13 precisely the kind that is permitted by the SDWA because
14 it is a specific directive geared towards securing
15 compliance with the SDWA and its implementing rules.
16 And it should be upheld by the board. So that's our
17 first ask of you all today, that you reinstate
18 corrective action item 3.
19 Second, we are asking this board to
20 correct a key inconsistency in the initial order. When
21 the division of water resources assesses a civil
22 penalty, they usually divide it up into two parts, the
23 upfront and the remainder. Now, the initial order
24 refers to the remainder as the contingent portion of
25 the penalty. But I'm going to call it a remainder or

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1 the deferred portion because it's really not a true
2 contingent penalty, as we explained in our brief. All
3 right.

4 So the total civil penalty is equal to
5 the upfront plus the remainder. The upfront is due, 12
6 upfront within 30 days of the water system receiving the
7 enforcement order. It's usually 20 percent of the
8 overall civil penalty. The remainder is deferred. It
9 does not have to be paid if the water system completes
10 certain corrective actions. That is to the benefit of
11 the water system. Right? They can spend money on
12 taking corrective actions instead of spending it on the
13 civil penalty.

14 The initial order affirmed the assessment
15 of the total civil penalty but it also voided the
16 remainder and said that it shall not be assessed.
17 That's in the initial order on page 18, conclusion of
18 law 5. That's where the initial order goes wrong,
19 because it treats the remainder, which is split out in
20 items 3 through 7 in the enforcement order, as separate
21 or a new civil penalty assessment. But that's not what
22 the department's enforcement order did.

23 The enforcement order assessed one total
24 civil penalty for all the violations and then split that
25 total civil penalty into upfront and remainder portions.

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1 So you can see the structure at the bottom of record
2 page 16. The total is assessed. If you keep reading,
3 you see that of that total, an upfront portion, 20
4 percent, was due within 30 days. And then if you keep
5 reading, the remainder was deferred and due only if the
6 town failed to complete certain corrective actions.

7 So all the deferred amounts that are
8 listed and tied to corrective action items 3 through 7,
9 those were not new civil penalty assessments. They were
10 just subparts of the total. In other words, the
11 remainder portion of the civil penalty had already been
12 assessed. It simply was not yet due. The initial order
13 found that the total civil penalty was lawful and
14 appropriate. If the total civil penalty was lawful and
15 appropriate, then the total civil penalty should stand.

16 So to recap, the initial order is
17 internally inconsistent with respect to the civil
18 penalty. On the one hand, it affirmed the total as
19 lawfully assessed. But then it goes on to say that the
20 remainder portion is void and shall not be assessed.
21 That is wrong because the total civil penalty is equal
22 to the upfront and the remainder and it was assessed all
23 at once.

24 If you agree with Judge Garland that the
25 total civil penalty was lawful, inappropriate, and we

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1 think you should, you should reinstate the remainder
2 portion of the civil penalty. Now, we've explained how
3 to do that in our brief. Specifically, if this board
4 agrees with the department that item 3 is a valid
5 corrective action item and wants to reinstate that, you
6 could take one of two paths. Option 1, you could
7 require the town to pay the total civil penalty of
8 \$22,830 and also require them to submit SOPs as separate
9 corrective action.

10 Option 2, you could retain the structure
11 from the enforcement order that tied \$1,500 to the
12 submittal of SOPs. So you could retain that structure
13 and allow the town to avoid \$1,500 of the civil penalty
14 if they submit the SOPs within 60 days of entry of this
15 board's final order. In that case, the town would have
16 to pay \$21,330 and the department would be satisfied
17 with either outcome because either outcome preserves the
18 total civil penalty. And that's what matters to the
19 department on this appeal.

20 If the total civil penalty was lawful and
21 appropriate, then the total civil penalty should stand.
22 So we ask that this board correct the initial order's
23 mistaken treatment of the deferred portions as separate
24 assessments and reinstate those portions to preserve the
25 total civil penalty. Let me just briefly touch on the

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1 town's position on appeal and give you three reasons why
2 this board should deny the town -- should deny the town
3 the relief it seeks on appeal.

4 First, let's talk about the town's
5 constitutional arguments. the town spends about a third
6 of its hearing brief arguing that this board should find
7 that certain sections of the SDWA and the Uniform
8 Administrative Procedures Act are unconstitutional. the
9 town is wrong on its constitutional law arguments as
10 explained by Judge Garland at record pages 400 to 405.
11 But that's sort of besides the point today. Because
12 this board is an administrative tribunal, you cannot
13 decide the town's facial constitutional challenges.

14 That's the rule that was laid down by a
15 Tennessee Supreme Court decision in 1995, Richardson v.
16 Board of Dentistry. This board has certain powers
17 granted to it by the general assembly. But deciding
18 questions of constitutional law is not one of those
19 powers. In Tennessee, only the courts can do that. So
20 the department urges you not to grant the town any of
21 the relief it seeks based on its constitutional
22 theories. Second, the statutes could not be clearer.
23 The department has broad authority to enforce against
24 any violation of the SDWA.

25 There is no bespoke five-part test for

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1 enforcement as the town suggests. The record in this
2 case is full of evidence that the town violated the
3 drinking water rules. In fact, the record has many
4 admissions from the town regarding the fact that those
5 violations occurred. Those admissions are available at
6 record pages 317 to 326, if you're interested. The
7 violations occurred and the department took enforcement
8 action. That is lawful and appropriate under the SDWA.
9 In fact, enforcing against violations is
10 the department's job. The general assembly didn't just
11 give the department power to enforce against violations.
12 The general assembly imposed the duty and responsibility
13 to enforce. That's what section 705 of the SDWA says,
14 power, duty and responsibility. So the town has it
15 exactly backwards with respect to what the default
16 should be when violations occur.
17 Third, let's talk about the smoking gun.
18 the town's case rests on Hearing Exhibit 9. But Hearing
19 Exhibit 9 does not overcome the weight of the evidence
20 in the record. Nor does it somehow show that the
21 enforcement order was based on a lie, as the town
22 claims. The record clearly shows that the department
23 used sound judgment in deciding to enforce against the
24 town.
25 In making the decision to enforce, the

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1 department looked at the totality of the circumstances,
2 which included the sanitary survey deficiencies, the
3 town's ETT score fluctuating above 11, and crucially,
4 the fact that the town served drinking water to the
5 public for months without certified operators in place.
6 Judge Garland, after considering and weighing all the
7 evidence in the record, the prehearing motions, the
8 trial transcript, the post-hearing briefs, Judge Garland
9 appropriately found in the department's favor on this
10 issue. That's in the initial order on pages 11 to 12.
11 And the town's interpretation of what a
12 single email in the record shows is just not enough to
13 support their theory that the enforcement order was
14 based on a lie. Especially when the only witnesses in a
15 position to speak to the meaning of the email were never
16 asked about it directly. Counsel for the town didn't
17 ask Tom Moss about it during his deposition. That's at
18 record pages 1011 to 1018.
19 And counsel for the town didn't ask
20 Jessica Murphy about it when she was testifying during
21 the trial, record pages 1018 to 1038. Regardless, a
22 single email certainly does not support the town's
23 request that the board overturn the initial order and
24 several of the other orders in this case. And we ask
25 that the board deny the town's request to relief on

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1 appeal and instead just slightly revise the initial
2 order to affirm corrective action item 3 and reinstate
3 the deferred portions of the civil penalty.
4 I want to respond to a couple of the
5 board members questions that were raised with counsel
6 for the town. At one point, Ms. Goff, with respect to
7 your question, the town's former operator, Robert Patty,
8 did notify the department ahead of time that he had
9 intentions to leave as the town's operator. And his
10 last day was July 28th. the town released Mr. Patty
11 from his employment on July 19th ahead of that scheduled
12 departure date.
13 Dr. Schwartz, you are correct. Groundwater
14 does have to be treated before being served to the
15 public. That's part of the record in this case. In
16 this case, Tellico Plains does have a true groundwater
17 system but they are required to disinfect and they do
18 that with chlorine. That's all part of the record in
19 this case. I want to emphasize that failure to send in
20 a piece of paper is not an accurate description of many
21 of the violations in this case.
22 For example, we have the failure to
23 continuously monitor the chlorine residual, which as a
24 community water system serving over a certain population
25 threshold, the town is required to do. We also have the

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1 failure to conduct complete sampling. That's not just a
2 piece of paper. That's the underlying sampling that
3 goes along with it. Regarding the town's argument that
4 they had fixed everything before the order, that's not
5 quite -- I just want to be clear about what Ms. Murphy's
6 testimony was at trial regarding this issue.
7 So the town argues that the division
8 should not have issued the director's order because they
9 did already fix the violations. But as Mr. Antone and
10 Ms. Murphy explained during the trial, many of the
11 assessed violations could actually not be fixed in any
12 sort of meaningful way. That's at record page 900 and
13 record page 1034. For example, the town could not fix
14 the fact that it served drinking water to customers for
15 months on end without appropriate operators on staff.
16 Similarly, the town could not go back in
17 time and take the correct number of samples in the
18 distribution system in July of 2023. They can't go back
19 in time and continuously monitor the chlorine residual
20 leaving the plant. It is true that the violations
21 assessed in the director's order occurred in the past
22 with respect to the date of issuance of the order. But
23 violations do not have to be ongoing for the department
24 to take enforcement action.
25 There doesn't have to be something

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1 special, as counsel for the town argued, going on in
2 order for the department to enforce when violations
3 occur. The plain text of SDWA contemplates this sort of
4 enforcement action. It provides the commissioner with
5 the authority to issue orders for any violation that has
6 occurred, is occurring, or is about to occur. It's the
7 rare situation where we hear about violations ahead of
8 time. This is typical, to enforce for violations that
9 occurred in the past.

10 And I believe it was Mr. Whitten who
11 brought up the topic of deterrence. The SDWA does
12 contemplate enforcement for both compliance and
13 deterrence purposes. And there's, of course, no
14 requirement the violations be ongoing in order for the
15 department to enforce.

16 And the obvious benefit in doing this,
17 taking enforcement action for past violations is to
18 deter future noncompliance, both by the subject water
19 system that's being issued the order and also by other
20 water systems in the state so that they know the
21 department takes these violations seriously and we will
22 enforce.

23 With all of that said, I believe I've
24 addressed several of the questions that came up. I
25 thank you for your time and attention and I'll reserve

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1 the balance of my time for a rebuttal, but also happy to
2 answer any questions that the board might have.

3 THE COURT: Yeah. Mr. Chair, does the
4 board have questions?

5 MR. GALBREATH: I'm sure we do. I've got
6 a question I'd like to start with, I think maybe very
7 pertinent to all of our thinking. What are the short
8 term and long term implications to the department's
9 ability to enforce these types of matters if we just
10 call it a day, we reject both of your arguments and
11 accept Judge Garland's initial order.

12 MS. BULLER-YOUNG: I think in the short
13 term, obviously, there would be consequences regarding
14 what the Town of Tellico Plains is required to do. So
15 as it stands right now, under the initial order, the
16 town is only required to pay the upfront portion of the
17 civil penalty. So that's 20 percent of the modified
18 amount, \$4,556. And under the initial order, as it
19 stands right now, the town is not required to complete
20 any corrective action items because they were all
21 voided.

22 So the town would not be required to
23 submit SOPs to the department as was required in the
24 enforcement order. So that's sort of maybe more the
25 short term. In the long term, I think if the board

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1 chose not to do anything with respect to the initial
2 order, I think it would create a lack of clarity
3 regarding the function and the structure of remainder
4 amounts of penalties.

5 So the department's ability to use sort
6 of this structure of, "All right. We're going to assess
7 you a full civil penalty. You're only going to have to
8 pay 20 percent of it up front but we're going to defer
9 the rest and only make that due if you fail to complete
10 certain compliance requirements," right? I think that
11 the department's ability to structure its civil
12 penalties and enforcement orders in that way would be
13 called into question if this board chooses to leave the
14 initial order in place.

15 MR. GALBREATH: So how is the -- so how
16 significant is that? Is this a precedent-setting-type
17 situation if we continue in the path I just described or
18 is this just an inconvenience to the department?

19 MS. BULLER-YOUNG: It is precedent
20 setting with respect to the division of water resources.
21 This is how the division structures not only its
22 drinking water orders but its other types of enforcement
23 orders as well. And this is to the benefit of the
24 regulated community for the division to structure its
25 enforcement orders in this way. It's not required to.

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1 Other divisions approach their civil penalties
2 differently.

3 For example, UST just assesses a full
4 civil penalty. A gas station has to pay that wholesale
5 penalty amount and also complete all of the corrective
6 actions. But the division of water resources, in their
7 enforcement discretion, has taken a compliance first
8 sort of approach to these enforcement orders. And
9 that's sort of the policy justification for splitting up
10 the civil penalty into that upfront and remainder
11 amount.

12 The division is trying to incentivize
13 water systems permittees to take corrective actions to
14 prevent these problems from happening again in the
15 future. Right? That's what we're talking about when we
16 ask a water system like Tellico Plains to submit
17 standard operating procedures. One of the things that
18 happened, this is in the record in the case, is that the
19 town failed to conduct grab sampling every four hours
20 whenever their continuous chlorine analyzer was down at
21 the rural veil treatment plant.

22 The CCA went down and the town wasn't
23 taking grab samples as they're required to do. You're
24 supposed to go to manual essentially in that sort of
25 situation. So the corrective action is geared toward,

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1 "Hey. We know this happened. Here's something we'd
2 like you to do to prevent the same thing from happening
3 again in the future." So I hope I've answered your
4 question (indiscernible).

5 MR. GALBREATH: I want to thank you for
6 integrating the other board members' questions into your
7 comments as well. It's very efficient. Efficiency is
8 much appreciated here. I guess my last question is you
9 were kind of jumping around a bit in a very lengthy
10 document. Is one of your briefs -- can you point us out
11 to a section in one of your briefs that succinctly
12 summarizes everything you're asking (indiscernible)?

13 MS. BULLER-YOUNG: Absolutely.

14 MR. GALBREATH: I think I know the page
15 of this but I'd rather you tell us.

16 MS. BULLER-YOUNG: Absolutely. So you
17 all have been provided with each party's opening brief.
18 So for the department, we call that our appeal brief.
19 And that explains exactly what we want this board to do.
20 We've come prepared with a draft proposed final order
21 for this board. And so the department's brief, section
22 1 is about that corrective action item 3 that we want to
23 be reinstated. And section 2 is about how we think this
24 board should reinstate the deferred portions of the
25 civil penalty to preserve the total.

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1 MR. GALBREATH: Is your summary on page
2 8?

3 MS. BULLER-YOUNG: I can check and I
4 think that sounds right to me.

5 MR. GALBREATH: I just want to point out
6 for the board's benefits so that --

7 MS. BULLER-YOUNG: Yes. Right. In that
8 prayer for relief. That's where we're telling this
9 board what it is we'd like you to do.

10 MR. GALBREATH: (indiscernible) choice.
11 I know that's a common legal term.

12 MS. BULLER-YOUNG: It is.

13 MR. GALBREATH: I'm a (indiscernible)
14 university guy (indiscernible). Any other
15 (indiscernible). It's kind of (indiscernible). All
16 right. (indiscernible) understand that's on page 8 of
17 the department's brief. All Right. Any other board
18 members got a question?

19 MS. GOFF: I have one (indiscernible).
20 This is (indiscernible)

21 DR. BIBLE: I have one. And one, I'm
22 going to speculate. Then I'm going to ask you to
23 speculate a little bit. I think what we're seeing here
24 is a mere penalty structured to encourage everybody to
25 get it fixed and keep it fixed. If that goes away, then

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1 will TDEC simply be required to issue bigger fines up
2 front to keep people compliant?

3 MS. BULLER-YOUNG: So that would be the
4 effect, Dr. Bible. So if, let's say this board just
5 affirms the initial order. Going forward, if we were to
6 issue an enforcement order like the one that was issued
7 against the Town of Tellico Plains, it would just be an
8 assessment. The underlying statutory scheme, SDWA
9 wouldn't change. Right? There would still be a
10 mandatory minimum of \$50, up to \$5,000, for each
11 violation.

12 And so the way that that would look would
13 be the enforcement order would just say, "Town of
14 Tellico Plains, you're assessed civil penalty of
15 \$22,830. Please pay that within 30 days of this order.
16 And then please also submit standard operating
17 procedures." They would just be separated.

18 DR. BIBLE: Thank you.

19 MR. GALBREATH: Thank you. Sorry, Ms.
20 Goff. I missed you.

21 MS. GOFF: This is Amanda. I got one
22 quick question -- or two questions actually. One, if we
23 stayed with the initial order and certain portions of
24 the fine were deferred or contingent, would each of
25 those contingent amounts have separate end dates for

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1 them or be open-ended? So they're not going on forever
2 and ever until the end of time until, say, the next
3 violation? They have an end date?

4 MS. BULLER-YOUNG: So I want to make sure
5 I'm answering all of that. I think if you leave the
6 initial order in place, then the precedent would be
7 established that the department can't use the --
8 contingent is not quite the right word and I do want to
9 be clear about that. I can talk about that in a moment
10 if you'd like me to explain the difference. But that
11 the department couldn't defer the portions of the civil
12 penalty in the way that we did in the enforcement order
13 against Tellico Plains.

14 And that enforcement order, Ms. Goff,
15 does have an end date. I forget whether it was two
16 years or 18 months. But for each of those compliance
17 requirements, so don't commit any further violations of
18 this rule, the end date would be two years from the
19 issuance of the order. Right?

20 So for the next two years, if you commit
21 another violation of this rule, this subportion from the
22 civil penalty that, I want to be clear, was already
23 assessed -- that civil penalty was already assessed for
24 past violations. But this subportion that we're not
25 making you pay, that will become due if you commit a

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1 future violation. Did I answer your question?
2 MS. GOFF: Yes. It gets messy when you
3 do that sometimes. My other question is, did the town
4 or was the town required to notify the customers or
5 consumers of the potential risks of their drinking water
6 during this?
7 MS. BULLER-YOUNG: So are you referring
8 to just for the failure to have certified operators in
9 place?
10 MS. GOFF: At any point if there was
11 risks to the water, whether it be the chlorination
12 system, the sanitization system, or the customers
13 notified?
14 MS. BULLER-YOUNG: Right. So our
15 drinking water rules do require that certain violations
16 get reported on a water systems consumer confidence
17 report which is distributed to their customers every
18 year. I'm not quite sure just off the top of my head
19 whether any of the violations at issue in this case were
20 required to be on that CCA but I could certainly find
21 out that information for you.
22 MS. BOYD: I just had a quick question.
23 I'm just assuming that it's not an extraordinary request
24 to expect a water system to have standard operating
25 procedures. Is that the case or --

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1 MS. BULLER-YOUNG: That's the case.
2 That's the case. And the department's requirements for
3 submittal of those standard operating procedures isn't
4 necessarily some sort of signal that we believed that
5 the town didn't have those. It was just, "Hey. Please
6 provide those to us. Let us see that you guys have
7 standard operating procedures in place. Specifically,
8 also, with an eye toward if your CCA ever goes out
9 again, your continuous chlorine analyzer, if that ever
10 goes out again, we want to make sure that you guys know
11 what to do in that situation. Take those grab samples
12 every four hours."
13 MR. GALBREATH: And it's fair to say
14 there's reciprocity in that as well. The department
15 publishes online numerous standard operating procedures
16 for its permit and regulatory processes as well. Is
17 that correct?
18 MS. BULLER-YOUNG: We do have policies
19 that guide our own actions and procedures, yes.
20 MR. GALBREATH: I'm old enough to
21 remember when that didn't exist as far as
22 (indiscernible). All right. Any other board member got
23 a question? Your Honor, we're done.
24 THE COURT: Thank you. Mr. Quist, I
25 think each of you (indiscernible) about three minutes

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1 for rebuttal. (indiscernible)
2 MR. QUIST: Well, I did and I listened to
3 what TDEC counsel had to say. But I think I've
4 adequately addressed all of that in my filings and in my
5 response brief. So I can call it a day.
6 THE COURT: Let me give members of the
7 board another opportunity. Was there anything that has
8 come up that you would like to ask, Mr. Quist? Dr.
9 Swartz (indiscernible).
10 Dr. Schwartz: Yeah. I think the question
11 I have in the back of my mind is the mayor is actually
12 the signature authority for permit. I believe that's
13 correct. And so you lost your operator. And then I
14 guess I just don't know how to get a feel for how quick
15 the seriousness of getting a new operator -- I know in
16 rural towns, finding an operator with those
17 certifications is difficult.
18 And I think a lot of times in other
19 municipalities, small communities, there's a neighboring
20 community like Mason, Madisonville, that has an operator
21 that they could have maybe temporarily gotten assistance
22 from. I just don't know what due diligence the mayor
23 was actively engaged in to try to correct this problem.
24 I don't know if you can answer to that or not.
25 MR. QUIST: Oh, absolutely. One of the

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1 issues in this whole penalty matrix of damages, a
2 component of that can be the actor's good faith. So an
3 issue at the contested hearing was the mayor's good
4 faith. What did you do? Walk me through it. The TDEC
5 witnesses, I asked them, "Was the mayor doing her best?
6 Was she acting in good faith?" All of that was yes,
7 yes, yes. It's in the technical record. I don't really
8 think I went into it much in my brief.
9 But she's not an idiot. She knows her
10 responsibilities and she cares and she went through
11 that. And I think first of all, it's a big deal to let
12 your operator go that had all four licenses. She found
13 Mr. Troy Tower, I think early in August and he came on
14 board. And the town council has to approve these hires.
15 And you got your drinking water guy, which is a big
16 deal, treatment operator. They all came on board. So
17 she did her best.
18 I challenged the TDEC witnesses to tell
19 me what could she have done differently. It's in the
20 record. She did her best. But a point is the sense of
21 urgency. What's the sense of urgency? Well, yeah,
22 there's a sense of urgency. Of course there is. Get an
23 operator. Of course there is. Bear in mind you can ask
24 the contractor board for 180-day extension and they'll
25 grant it under their criteria and TDEC has to honor.

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1 So she found her operators pretty darn
2 quick in my book and got them approved by the town
3 council pretty darn quick. It's in the record. Thank
4 you for your question.

5 MS. GOFF: One more quick question. How
6 many certified operators does the town now have
7 currently?

8 MR. QUIST: That was not an issue in our
9 case. I would have to turn around and ask my client
10 that question because it's not an issue in my case. I
11 don't know the answer. But I know they have more than -
12 - they have more than one because I've talked to them.
13 I've talked to them. I don't know if it's four. I
14 don't know. I don't know if they're second-tier. I
15 don't know if they got six. Excuse me. It wasn't an
16 issue in my case. So I don't know. Sorry. There's one
17 of them behind me.

18 MR. GALBREATH: (indiscernible).

19 THE COURT: Thank you. Ms. Buller-Young,
20 do you have any final arguments you'd like to make?

21 MS. BULLER-YOUNG: I do just want to make
22 a couple of clarifications for this board and answer
23 some of the questions that have come up. I do want to
24 clarify on the question of the motion for costs. Judge
25 Garland found that the department was the prevailing

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1 party in this case. And you can see that in his order
2 respecting the motion for cost, which is in the
3 certified technical record, that 1600-page PDF. And APD
4 costs are billed to TDEC. Those costs do become our
5 own.

6 And Judge Garland found statutory support
7 for the department's claim for costs in this case. I
8 was able to confirm with our environmental technical
9 fellow that a couple of the violations in this case
10 would have been required for public notice. the town
11 would have been required to provide public notice for
12 the failure to continuously monitor the chlorine
13 residual levels. And so I just wanted to let you all
14 know that. I'm happy to answer any other questions that
15 board members might have for me.

16 MR. GALBREATH: Neal Whitten.

17 MR. WHITTEN: One of the town's
18 conventions was that TDEC just doesn't bind directly for
19 every violation. They take some discretion and develop
20 their orders and penalties based on that discretion.
21 It's my understanding -- and I'd like for you to confirm
22 -- that if TDEC did not take such an enforcement action
23 at all, chose to ignore (indiscernible) the town could
24 be subject to a citizen lawsuit under this SDWA?
25 MS. BULLER-YOUNG: I'm not sure just off

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1 the top of my head about the SDWA citizen suit
2 provision. I haven't ever dealt with it myself. So I
3 would want to cross my T's and dot my I's, Mr. Whitten,
4 before I answer that question. Certainly the town would
5 be responsible for any sort of nuisance claim or a claim
6 from someone who drank bad water and got sick because of
7 it. I do want to emphasize just respects to the earlier
8 portion of your question.

9 If TDEC had chosen not to enforce this
10 case, in this case, that would have been treating the
11 town differently from other water systems. Right? So
12 there are some different ways that the division
13 prioritizes water systems for enforcement. One of those
14 is using that ETT score from EPA. That tool, when a
15 water system score fluctuates above 11, it kind of gets
16 put into a queue for formal enforcement.

17 Another way that the division uses to
18 process prioritize enforcement through administrative
19 enforcement orders is through conversations between the
20 field office staff. So the inspectors, the folks who
21 are on the ground and the compliance and enforcement
22 unit, right, so they can make enforcement action
23 requests.

24 And the record in this case demonstrates
25 that there were those sorts of conversations going on

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1 between the field office staff and the compliance and
2 enforcement unit, particularly after the penalty field
3 office staff made a site visit to the town after they
4 had experienced some flooding and there wasn't a
5 certified operator on staff.

6 And the record shows that the persons who
7 were there at the water treatment plant did not know how
8 to conduct disinfection byproduct sampling. TDEC staff
9 from the field office had to assist and advise on how to
10 issue a boil water advisory. So I think that answers
11 your question.

12 THE COURT: Any questions from members of
13 the board for (indiscernible) counsel before we move
14 into deliberations? (indiscernible) I just want to be
15 sure that you all have been able to ask what you want.
16 Because once we move into deliberations, we'll be
17 closing that part of the trial case, I should say. And
18 of course, as we stated, it'll be your chance to discuss
19 openly on the record where you land on this.
20 (indiscernible) alluded to having a proposed order.
21 Either or both parties may have a
22 proposed order for you all. I remind you that it is not
23 itself evidence in the case. In this case, you are
24 limited to the record as it already exists. There's
25 been no new proof today, no new evidence. Everything

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1 has already been -- it's your job to review. So I only
2 ask that if you review either proposed orders, that you
3 state on the record which subsections you're adopting or
4 changing or anything like that just so that everyone
5 knows what exactly the decision is going to be.
6 With that, I will ask both parties if you
7 do have a proposed order, either that you already have
8 loaded or that you'd like to pass out. Feel free to do
9 so at this time. Counsel, is there anything that you
10 all for me to address before I turn it over to Mr. Chair
11 for deliberations?
12 MS. BULLER-YOUNG: No, Your Honor,
13 nothing else that we'd like you to (indiscernible).
14 THE COURT: (indiscernible). There we
15 go.
16 MS. BULLER-YOUNG: And the department
17 does have a draft proposed order prepared. It's not
18 printed out just because we wanted to wait and hear the
19 board's deliberations and make any necessary edits to
20 that proposed order based on what this board actually
21 wants to decide.
22 THE COURT: Mr. Quist, anything for this
23 side of it.
24 MR. QUIST: Nothing further. And we do
25 not have a proposed order.

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1 THE COURT: And this is simply for the
2 good of the order. I have had hearings where counsel
3 will kind of draft here on the screen, the board will
4 put the changes and adapts as it sees fit. So whatever
5 you are comfortable with, we will move to deliberations.
6 Mr. Chair, it is your show.
7 MR. GALBREATH: Thank you, Your Honor.
8 And we, we do have experience with drafting orders in
9 sessions (indiscernible). Okay. We're open for any
10 discussion.
11 MS. BOYD: Are we able to see the draft?
12 Elaine Boyd. Are we able to see the draft on the
13 screen?
14 MS. VANN: This is Emily Vann.
15 (indiscernible) office of general counsel. Yes. I'm
16 going to pull it up right now, similar to what we've
17 done in the past.
18 MR. GALBREATH: I just want to remind all
19 the board members, Your Honor, so admonition of sorts
20 that a draft order does not indicate that it's evidence
21 as part of (indiscernible). It's just a graph. We're
22 open, but whatever you want to do, including edging this
23 draft or coming up with your own motion (indiscernible).
24 So it might help if we just started the conversation
25 around just kind of general observations, general

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1 positions. (indiscernible) see if starting with the
2 wide part of the funnel brings us down to the narrow
3 part funnel. Neal.
4 MR. WHITTEN: Two of the issues at hand
5 in the order that was the priority, that's under appeal
6 at this point (indiscernible) tested related around
7 whether the penalty itself is appropriate. And Judge
8 Garland said that it was. Right? There, it becomes a
9 question of whether the contingent deferred portion of
10 the penalty is appropriate or not appropriate to do in
11 those cases. From my understanding -- and I believe
12 what I have heard and read and understand is that the
13 penalty could have been the total to start with.
14 So by the relief given, if you do some
15 things that we ask you to do, we can reduce that
16 penalty. So I believe that the TDEC stance on that is
17 permittee-friendly and needs to be retained.
18 MR. GALBREATH: Ms. Boyd.
19 MS. BOYD: Mr. Chairman, I was just going
20 to mention that kind of one of the basic tenets that's
21 raised in the documents is I think the objection to the
22 assessment happening after the violation. But that's
23 basic to what we do. And I think there's an analogy
24 somewhere in the paperwork about speeding. And if you
25 clock at 30 miles over and then you correct, you don't

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1 have the right to then say to the officer, "I've
2 corrected my speeding and so you can assess." I'd like
3 to try that but I don't think it would work.
4 MR. GALBREATH: Yeah, Ms. Boyd, I had a
5 similar speeding ticket analogy that sprouted my mind
6 earlier, thinking about how behavior is adjusted. I
7 think all of us drive slower because we get a chance to
8 get a ticket. So my initial reaction to this was the
9 general assembly created this whole process
10 (indiscernible) a while back that ALJ would simply
11 avoid. And as many of you know this isn't a president
12 setting comment at all.
13 But it's been common for us to accept
14 (indiscernible) without much edit, without much change,
15 without taking up on further appeal except in cases
16 where parties fastest to (indiscernible). And so I was
17 a little bit hesitant when I thought about the
18 department having the opportunity to get tinker with a
19 judge's decision on a matter like this. But as they
20 went through their explanations, particularly an answer
21 to their questions, it became clear their precedents
22 here short-term or long-term need to be considered.
23 We all know behavior shaped by clear
24 expectations and appreciate the department's ability and
25 desire to make an effort to be very corrective in this

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1 matter in trying to ensure that there won't be any
2 confusion in the future over how possibly rejecting that
3 position in terms of what kind of message it might send
4 (indiscernible). That's not easy work to do, to take a
5 previous judge's decision and to try to defend your
6 former client thoroughly. And so I appreciate that.
7 Any other comments or questions?
8 MS. GOFF: I've got a quick comment.
9 This is Amanda Goff. I feel like we would be setting a
10 very dangerous precedent, making it very difficult for
11 field staff to get and maintain compliance and encourage
12 compliance if we tried to play fast and loose with
13 imposing these civil penalties that are already stated
14 within the law. And so my opinion is that of we should
15 require all civil penalties to be paid as stated in law.
16 And that's where I stand on that.
17 MR. GALBREATH: (indiscernible) Dr.
18 Swartz.
19 DR. SCHWARTZ: Yeah. Kind of following the
20 -- this is John Schwartz. I'm following what Neal and Doc
21 and (indiscernible) said. I agree it's (indiscernible)
22 some penalty and I don't know what the wording that --
23 what the wording would be exactly. It's a little bit
24 confusing to me which will be I guess suggested as a
25 change. Right? And then some of the money would go

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1 back to the city to aid in them correcting their
2 situation. Is that what I'm gathering as an alternative
3 for the board?
4 MR. GALBREATH: I don't think we can ask
5 the question. Counsel (indiscernible)
6 THE COURT: (indiscernible) percent
7 likelihood that at the end of this will be the
8 suggestion of the argument. Obviously, Mr. Quist has
9 given you a different argument in this discussion. So
10 as you go through this document you might learn some
11 things that help you with that. You can decide whether
12 you want to adopt them or whether you want to adopt
13 them.
14 DR. SCHWARTZ: I see. Okay. Thank you for
15 the clarification. Thank you, Your Honor.
16 MR. GALBREATH: Thank you. That was a
17 very appropriate and clear comment. I do want to say
18 generally for the mayor indirectly (indiscernible)
19 representative of the Town of Tellico Plains stated, the
20 legal representatives of the department really get up
21 (indiscernible) for following through during times --
22 there's not really a sense of urgency. There's not
23 really a crisis going on. And often, the first response
24 is an action response of people who push the British
25 army off this continent.

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1 We're kind of used to kind of being
2 sensitive about authority, power. But they're
3 protecting public health, they're protecting drinking
4 water, almost the second most frequent thing that goes
5 in our bodies (indiscernible). Right? And then
6 secondly, we're at a time in human history where weather
7 and just catastrophic events are occurring. And this is
8 an odd analogy, but tonight the metro council is going
9 to vote on resolution about whether or not the head of
10 National Weather Service should be fired or not.
11 So there's a lot of accountability out
12 there now about good faith, good intention, leadership
13 and these boring (indiscernible) I describe myself kind
14 of geeky endeavors to make sure people understand the
15 rules and follow through with enforcement, follow
16 through with penalties. They're part of helping us
17 avoid those big crisis and those big events that we get
18 a little bit complacent about sometimes. We get called
19 flat-footed about if we (indiscernible) these moments.
20 Okay.
21 MR. WIMBERLEY: Mr. Chairman.
22 MR. GALBREATH: Yes.
23 MR. WIMBERLEY: So I think it's important
24 here that we see that Judge Garland upheld the
25 appropriateness of the (indiscernible). I think that's

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1 an important piece of this. I can also appreciate the
2 deferred -- maybe it sounds contingent if they're going
3 to fix some things in a void. So that does sound
4 contingent. So we can call them deferred. I appreciate
5 the fact that a water system has that opportunity to
6 make the corrective actions. It does feel like maybe
7 those fees should remain, to me. And I agree with other
8 comments here that a precedent is also a very important
9 part of what we're thinking about on this issue.
10 MR. GALBREATH: Thank you,
11 (indiscernible). I thought I had that coming up. Okay.
12 All right. It sounds like there might be some interest
13 in addressing some individual language in the draft or
14 what is presented. The momentum here seems to be
15 towards favoring the department's position. So would
16 you like to proceed with that or am I interrupting?
17 MR. WHITTEN: I've got just one other
18 thing I think we need to -- and it very well could be
19 addressed language. Obviously, I haven't read this to
20 know. But one of the other parts of this that was asked
21 by the department that I think we need to at least have
22 talked about is the appropriateness of the corrective
23 action to submit the standard operating procedures and
24 that that is restored, which was thrown out in the
25 initial order. So I think that's something we at least

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1 talk about.

2 As a permittee, I don't find that to be

3 an objectionable ask for a corrective action. It likely

4 exists ahead of time. It wasn't new required or if it

5 was, they had bigger issues. So I think we should at

6 least discuss that as well as part of this.

7 MR. GALBREATH: You might like to talk

8 about that, Ms. Boyd.

9 MS. BOYD: Elaine Boyd. I would just

10 like to say I definitely agree with that. And in fact

11 it seems like it's the request for that as a corrective

12 action. It seems like something designed to help

13 prevent these issues in the future. So I would very

14 much support restoring that portion.

15 MR. WIMBERLEY: Yeah. I can understand

16 unwritten standard operating procedures. It seems that

17 has been stated maybe has all of the right operating

18 procedures were happening, even if they weren't written

19 down, then this is not so burdensome of a request to

20 say, "Well if those things are in place, let's get them

21 written down into -- let's get that on paper."

22 MR. GALBREATH: That was Terry Wimberley.

23 MS. GOFF: Yeah. This is Amanda Goff.

24 So part of my hesitation with that is the fact that they

25 didn't even know to know how to issue a boil water

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1 advisory. And that's something that's very basic that

2 has to be submitted and is part of operational

3 procedures to begin with. So I think this may have been

4 more of they didn't know where to find or how to find

5 the standard operating procedures that they did have to

6 follow versus them writing new ones to use and to be

7 useful in the future type thing.

8 MR. GALBREATH: Are there any other

9 comments from any other board members about this most

10 recent (indiscernible)?

11 MR. MARSHALL: This is Sam Marshall. I

12 was just going to say that I also support adding back in

13 that requirement of having standard operating

14 procedures. Is that item number 3, the original

15 assessment order? I think that's very appropriate. But

16 I wanted to clarify, I think Ms. Buller-Young, you said

17 if we decided today or voted to allow that to be put

18 back into the order, then that would also provide them

19 the opportunity if they did that, the \$1500 or something

20 could be deducted from the penalty.

21 Did you indicate that or is that

22 something I can ask? I'm not sure. I just want to make

23 sure if we did vote for that, it would have an

24 implication or it would provide them an opportunity to,

25 if they did that, to reduce the fine or the total fine.

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1 THE COURT: It might be best to see

2 what's in the proposed order. Ultimately it's the

3 board's order tonight. You can make it say that or not.

4 MR. MARSHALL: Well, I thought that was

5 had been stated earlier. I just want to clarify that

6 that is what had been stated.

7 THE COURT: Yeah. We can ask that quick

8 question. It's basically yes or no. Has that been

9 stated?

10 MS. BULLER-YOUNG: Yes. That was one of

11 the options that was discussed.

12 MR. MARSHALL: But you gave us, at some

13 point, two options, two ways we could accomplish

14 something. And that was one of -- okay. I just wanted

15 to clarify that. Thank you.

16 MR. GALBREATH: So, Your Honor, I'm going

17 to speak to Ms. Vann to scroll and not ask questions

18 (indiscernible). Ms. Van, would you scroll to the

19 sections that relate to these previous office?

20 MS. VANN: My computer has gotten mad at

21 me. Hang on.

22 MR. GALBREATH: Okay.

23 MS. VANN: Chairman, is this what you

24 were looking for right here?

25 MR. GALBREATH: (indiscernible) that one.

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1 MS. WARD: Chairman, if I may. Your

2 Honor may I ask you a clarifying question? So we have

3 had a deliberation period before. Would you like the

4 board to vote on the decision before looking at terms of

5 the initial order? So inquiring if they would like to

6 modify deny the firm?

7 THE COURT: I've had boards do it either

8 way. Normally, if we're doing a vote, it's best to vote

9 on what's actually in the order. Sometimes boards will

10 say, well hey, here's what we're going to do. Open it

11 on record and give go to the order and technically do it

12 in front of the order itself.

13 So any votes that we may, I'll ask that

14 you base that on what the order says. So if some boards

15 will go through all the lines and then make the final

16 vote, some boards will say, "You all kind of get this

17 (indiscernible). It's kind of what we're thinking.

18 Right? This is what we're going to do. What's the

19 (indiscernible) status (indiscernible)?"

20 MR. GALBREATH: Your Honor, if I'm

21 thinking about this in terms of traditional

22 (indiscernible) processes, procedures, it might be

23 helpful if we entertain a motion to accept this current

24 draft order amended with individual amendments calling

25 out specific sections of that draft order to amend and

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1 each amendment one at a time. The amendments would edit
2 the draft order and then take the final voting on the
3 (indiscernible). Does that sound okay?
4 THE COURT: That's a perfectly a fine way
5 to do it. You can also just go through it and adopt it.
6 (indiscernible)
7 MS. GOFF: I've got one quick question on
8 there. If we do add the caveat for the standard
9 operating procedures, what responsibility then falls on
10 TDEC to potentially having to enforce compliance of
11 those documents that are submitted? Or are they just
12 arbitrarily (indiscernible) there?
13 MR. GALBREATH: Would you mind just kind
14 of tabling that thought from minute? Let's come back to
15 it. So we should draw a line. If we entertain a motion
16 to accept the draft order as amended, that means we
17 probably take a second and then we would proceed with
18 amending specific sections of this order. And then we
19 could have debate about each amendment and then process
20 that amendment. We could come back with a recent motion
21 (indiscernible). Does that sound okay? If it doesn't
22 sound okay, we won't do it. But if it does sound okay,
23 I need a motion.
24 MR. WHITTEN: I have a question.
25 MR. GALBREATH: Yes.

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1 MR. WHITTEN: I think we're kind of all
2 on the same page but I don't know that we're all on the
3 same page.
4 MR. GALBREATH: We'll find out pretty
5 soon.
6 MR. WHITTEN: Very well.
7 MR. GALBREATH: Motions fail, motions
8 pass. All right. Anybody like to make a motion? And
9 you can state the motion as something to the effect of
10 (indiscernible) trying to talk about this
11 administratively/procedurally. Move to accept the
12 department's current draft order with amendments to be
13 processed in additional deliberation.
14 DR. SCHWARTZ: Yeah.
15 MR. GALBREATH: Dr. Swartz
16 (indiscernible).
17 DR. SCHWARTZ: Yeah.
18 MR. GALBREATH: Counsel Ward
19 (indiscernible).
20 MS. WARD: (indiscernible)
21 SPEAKER 4: And I'd like to make a motion
22 to accept the motion, as Chair Galbreath stated.
23 MR. GALBREATH: Is that okay, Ms. Ward?
24 MS. WARD: Can you (indiscernible)?
25 MR. GALBREATH: I'll gladly state

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1 (indiscernible). Okay.
2 SPEAKER 4: Thank you.
3 MR. GALBREATH: See if I remember. The
4 motion is to accept the department's draft order and
5 then to process additional amendments through board
6 discussion. Is that acceptable? All right.
7 SPEAKER 4: Yes.
8 MR. GALBREATH: Do we have a second?
9 DR. BIBLE: I second.
10 MR. GALBREATH: We have a second. Do we
11 have a (indiscernible)? All right. Now we're in the
12 discussion on motion. And in discussion on motions,
13 that's where you have amendments. So who would like to
14 amend the order as presented here. Ms. Vann, you may
15 have to ask Your Honor.
16 THE COURT: I think it's most important
17 that you all decide where you want to start. I don't
18 know if that's what you're about to ask me. But again,
19 there were no new facts. And I don't want to speak for
20 counsel for both parties. It's also summary judgments.
21 I also don't know if Mr. Quist has seen this before.
22 Fair to presume that the facts are probably what's
23 already been either agreed to or ruled on summary
24 judgment. And we're just looking at the conclusions and
25 penalties or lack thereof. (indiscernible).

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1 MS. VANN: So this is Emily Vann with
2 the office of general counsel. So the way this order is
3 structured is that it goes through a traditional
4 findings of facts, conclusions of law, from what the
5 board heard today. Now, in this section right here, I
6 just wanted to make a clarifying statement. So you see
7 paragraph 3 and 4, the way this was originally drafted
8 is this is an either or. It provides two different --
9 both these paragraphs do the same thing.
10 So the idea is you can pick the one that
11 you like better. We'll delete the other one and work
12 from there. But we can go to the beginning of the order
13 and go through the facts, taking it sort of in a direct
14 order. If you would like to do the reverse and work on
15 what your decision is and then go to the facts. I can
16 do it either way. Just tell me where you would like me
17 to start.
18 MR. GALBREATH: Well, it might help --
19 this is very complicated. But it might help if every
20 board member turned to page 8 of the department's appeal
21 brief and we take those one, two, and three, one at the
22 time. Because I know some of those -- there didn't
23 appear to be any interest in the (indiscernible). At
24 least one of those appears to be a (indiscernible) to
25 amend in order to reflect that. So if we follow that

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1 outline, I think it'll go a lot smoother.
2 So if you look on page 8 of the TDEC
3 appeal brief under the heading, "Prayer for Relief,"
4 item number 1 would be the first order of business in
5 terms of amendments, logical order. And that first item
6 says amendment conclusion of law clarified in paragraph
7 16 of 3 of the director's order (indiscernible) is a
8 valid corrective action that does not offend due process
9 principles. Would you turn to that section of your
10 draft order where that is specifically addressed, Ms.
11 Vann? And then we'll just (indiscernible).
12 MS. GOFF: Your Honor.
13 THE COURT: Yes, ma'am.
14 MS. GOFF: We're looking at what they've
15 provided us --
16 THE COURT: I know (indiscernible)
17 MS. GOFF: -- pages you're saying are --
18 THE COURT: Sorry. It's in your --
19 MS. GOFF: And so it's --
20 THE COURT: It's in your email. You have
21 any ability to access that over email? It's actually on
22 a zip file on your email. I had a little bit of a hard
23 time opening it. I had to send it to another place and
24 then (indiscernible). I think once you see it on the
25 screen, I think that will suffice. Why don't I manage

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1 kind of (indiscernible).
2 MS. GOFF: Yeah.
3 MR. GALBREATH: (indiscernible) and I
4 think if you look at the screen, that language will
5 represent that (indiscernible).
6 MS. VANN: I'm trying to operate on two
7 computers to pull up the page that you're talking about
8 in the brief so that the board members that don't have
9 access can see it. Drake, I need you to again
10 announce (indiscernible).
11 MR. GALBREATH: If you show us that
12 (indiscernible).
13 MS. BOYD: So, Mr. Chairman, I think it's
14 represented as number 2, although we need to correct the
15 error here. But I move that we accept number 2, which
16 is indicating that item number 3 of the director's Order
17 is a valid corrective action.
18 MR. GALBREATH: Before you formalize that
19 motion, would you mind reading exactly what you
20 (indiscernible) including the word here in this
21 (indiscernible).
22 MS. BOYD: The initial order aired, and
23 void in paragraph 16, item 3 of director's order DWS23-
24 0190 because item 3 is a valid corrective action that
25 does not offend due process principles.

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1 MR. GALBREATH: That's your motion?
2 MS. BOYD: Yes.
3 MR. GALBREATH: Is there anything about
4 that sentence that is different from what you all asked
5 us to do originally? Your Honor, is that okay if I ask
6 that?
7 THE COURT: Yes. I guess I'll just
8 remind everyone that this is your order and you can make
9 it say whatever you like. The department's asking that
10 you make it (indiscernible).
11 MR. GALBREATH: Yes, sir. Okay. So I
12 need to rephrase that (indiscernible) give us some great
13 clarity on that. Does any board member have any
14 objection to that sentence being worded that way? If
15 not, we don't need a memo. It's in the draft rule.
16 We're good? Okay. All right. Without objection, we'll
17 move on to item number 2.
18 Item number 2 says, "mend the conclusion
19 of law. Clarify that the department has proven about
20 performance of evidence that its civil penalty
21 calculation (indiscernible) DWS23-0190 is appropriate
22 and applies to the political law policy.
23 (indiscernible). See Tennessee code annotated." We'll
24 skip that. And the uniform policy (indiscernible) the
25 department is no longer pursuing three of the violations

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1 and is not seeking to collect the \$12,012.40 in damages.
2 And the total civil penalty calculus has reduced to
3 \$22,830. This seems to be the item that maybe something
4 wanted to edit (indiscernible). Do you have that pulled
5 up yet?
6 MS. VANN: It's paragraph 1 that's
7 currently on the screen.
8 MR. GALBREATH: That's right. It's just
9 out of order (indiscernible). So you all had a lot of
10 conversation around that previously. How do you want to
11 change that sentence? That needs to be (indiscernible).
12 MS. GOFF: Mr. Chairman, I think if Ms.
13 Vann could scroll up some. This is where we have the or
14 option.
15 MS. VANN: Yeah. That's the next down
16 here. Here, this is the -- then what to do. The either
17 or.
18 MR. WHITTEN: But I think section 1 was
19 also a question. Right? I think --
20 MR. GALBREATH: We can fix both of them.
21 MR. WHITTEN: No. I don't think there's
22 any -- personally, I don't think there's anything to be
23 fixed. But I think it should be discussed or --
24 MR. GALBREATH: (indiscernible)
25 MR. WHITTEN: -- that we agree with what

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1 that says or we don't.
2 MR. GALBREATH: Excellent. Okay,
3 excellent. Is there any objection to the wording that
4 you see on the screen? If there's none, we don't need
5 an amendment if there isn't. No objection? Mr. Future
6 Vice Chair? All right. We can move on. Let's move to
7 that other paragraph that Ms. Boyd was just talking
8 about.
9 MS. VANN: Now, the paragraph numbers,
10 ignore those. I just space down so you can see them
11 both on the same page.
12 MR. GALBREATH: So this is an or. So we
13 want it -- since this is a draft we have to choose which
14 of these two options we want. Okay? So which of these
15 two options do you prefer? Or as Your Honor stated, if
16 you want to edit it, edit it.
17 MS. GOFF: This is where I was saying I
18 like the idea of them having to submit SOPs. However, I
19 think it's going to make a dangerous precedent. So if
20 we do that in lieu of a civil penalty in this case
21 because I don't necessarily believe that even if they
22 had those SOPs they would have known where to find them
23 or use them had that been the case. And I don't want to
24 also put the burden on TDEC's shoulders of then once
25 they submit these sops to having to keep track of them

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1 and making sure that they are being compliant with their
2 own SOPs.
3 MR. GALBREATH: Do you have language that
4 would represent that (indiscernible) one of those
5 preferred thoughts? You have two options as well.
6 MS. GOFF: I'm saying I like the second
7 option where we make them responsible for the payment of
8 the total several penalties.
9 MR. GALBREATH: (indiscernible)
10 MS. BOYD: This is Elaine Boyd. I don't
11 think that TDEC would have the responsibility of making
12 sure they were complying with their SOPs. We would
13 require them to submit the SOP to make sure they had an
14 SOP in place. But we would then just monitor them
15 according to the Safe Drinking Water Act regulations
16 like we normally do. We wouldn't be trying to ensure
17 that they complied with their own SOP. I just wanted to
18 clarify that.
19 MR. GALBREATH: The purpose of an SOP is
20 the transparency of micro behaviors in our macro
21 regulatory environment. Well, the stated option is the
22 second, item number 5. Right? Does anyone have any
23 objection to choosing only item number 5?
24 MR. WHITTEN: I do not agree with that
25 take on how we should structure the order. I believe

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1 number 4 is more appropriate. It gives permittee more
2 flexibility and it's precedents. I think that's
3 important.
4 MR. GALBREATH: Any other board member
5 (indiscernible)?
6 MR. MARSHALL: Yeah. This is Sam
7 Marshall. I'd also just like to lend my support for an
8 item number 4 here. The way that's worded, I think
9 that's consistent with the way TDEC administers their
10 other enforcement actions and penalties being sort of
11 some of the deferred money is contingent upon certain
12 actions being taken by the permittee that can then avoid
13 some of those. And this is sort of consistent with that
14 policy. It's been going on for years as far as I'm
15 aware. So I would like to see a motion to adopt number
16 4 as true.
17 MR. GALBREATH: So the way these kinds of
18 differences in opinions are resolved, if someone makes a
19 motion and we -- it either fails for lack of a second.
20 (indiscernible). If it's a majority votes, that's it.
21 That's how we decide. So who wants to make the motion?
22 MR. MARSHALL: This is Sam Marshall.
23 I'll make a motion that we, the board here, vote to
24 accept item number 4, paragraph 4 here as it's stated on
25 the screens in front of us.

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1 MR. GALBREATH: And in lieu --
2 MR. MARSHALL: In lieu, yeah. And if we
3 do vote before the number 5, it, by default, goes away.
4 MR. GALBREATH: Dr. Schwartz, do you
5 understand the right motion? All right. Do we have a
6 second?
7 DR. SCHWARTZ: Yes. I understand the
8 motion.
9 MR. GALBREATH: That was Dr. Schwartz.
10 (indiscernible). He's the record keeper. All right.
11 Thank you, Dr. Schwartz. All right. So we have a motion.
12 Is there a second?
13 MR. WHITTEN: This is Neal Whitten. I'll
14 second that motion.
15 MR. MARSHALL: Sam Marshall
16 (indiscernible)
17 MR. GALBREATH: Is there any further
18 discussion on choosing item number 4 and
19 omitting(indiscernible). Seeing none, roll call.
20 MR. SMARCH: The motion is to accept item
21 4, paragraph 4 in lieu of item 5. Dr. Bible.
22 DR. BIBLE: Yeah.
23 MR. SMARCH: Elaine Boyd.
24 MS. BOYD: Yes.
25 MR. SMARCH: Dodd Galbreath.

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1 MR. GALBREATH: Yes.
2 MR. SMARCH: Brent Galloway.
3 MR. GALLOWAY: Yes.
4 MR. SMARCH: Amanda Goff.
5 MS. GOFF: No.
6 MR. SMARCH: Sam Marshall.
7 MR. MARSHALL: Yes.
8 MR. SMARCH: John Schwartz.
9 DR. SCHWARTZ: Yes.
10 MR. SMARCH: Neal Whitten.
11 MR. WHITTEN: Yes.
12 MR. SMARCH: Terry Wimberley.
13 MR. WIMBERLEY: Yes.
14 MR. SMARCH: The motion passes.
15 MR. GALBREATH: Ms. Goff (indiscernible).
16 All right. So we'll move on to item number 3. While
17 they look that up, I'll read it.
18 It is to amend the conclusions of law,
19 clarify that the town is responsible for payment of the
20 total civil penalty, \$22,830 which was properly assessed
21 for its violations of the SDWA within 30 days of the
22 board's order (indiscernible) and alternative. Amend
23 the conclusions of law to clarify the town is
24 responsible for payment of \$21,330 of the total civil
25 penalty within 30 days of the board's order becoming

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1 final but does not have to pay the remaining \$1500 at
2 the time. Submit standard operating procedures within
3 60 days of the board's order becoming final.
4 Are there any amendments to that line of
5 (indiscernible). So did we cover both of those items in
6 both of those -- in that narrative?
7 MS. BULLER-YOUNG: Yes, Chairman. In
8 the, it's all in a single paragraph. In the order we
9 had it broken out as the either or so the board could --
10 MR. GALBREATH: Do you understand that?
11 All right. As long as you all understand it. As long
12 as the majority understands it, we'll be fine. Okay.
13 All right. So I think we're done. Are there any other
14 -- given Your Honor's previous admonitions, stay open
15 minded about -- this is the department's orders, your
16 board, if you want to make any additional changes or
17 edits, is there anything that you want to address?
18 We've essentially fulfilled the department's request
19 with one amendment.
20 THE COURT: Mr. Chair, I just want to
21 confirm one thing on the record, Ms. Vann if that's
22 okay. The board is not finding new facts. Is it
23 correct to say that it's a fact in this order -- are
24 these same findings impact on the initial order?
25 MS. VANN: Emily Van, the office of

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1 general counsel. Yes, Your Honor, that's correct.
2 However, because this is the board's order, perhaps the
3 board would like to have me start at the top and just
4 read it to make sure that you agree with the way the
5 facts are presented in this order.
6 THE COURT: Or the board can just outline
7 that that's their -- the board cannot find new facts.
8 Those are already determined. And I just want to be
9 sure that the facts that are here are the same facts
10 that are in the initial order.
11 MR. GALBREATH: Your Honor, we could
12 entertain a motion for another amendment that no new
13 findings or facts will be included in this order.
14 (indiscernible) motion.
15 DR. BIBLE: I so move.
16 MR. GALBREATH: Do we have a second? Mr.
17 SMARCH, do you understand the motion? The board is
18 directing counsel to (indiscernible) complete the draft
19 of this order that did not include any new findings or
20 facts (indiscernible). I think this Ms. Ward's going to
21 (indiscernible). So you understand?
22 MR. SMARCH: I understand.
23 MR. GALBREATH: So we have a motion.
24 MS. BOYD: Second.
25 MR. GALBREATH: Ms. Boyd seconds the

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1 motion. Any discussion? Seeing none (indiscernible)
2 roll call. (indiscernible)
3 MR. SMARCH: So the motion is to complete
4 the order without additional (indiscernible).
5 MR. GALBREATH: Yes. (indiscernible)
6 MR. SMARCH: Dr. Bible.
7 DR. BIBLE: Yeah.
8 MR. SMARCH: Elaine Boyd.
9 MS. BOYD: Yes.
10 MR. SMARCH: Chairman.
11 MR. GALBREATH: Yes.
12 MR. SMARCH: Brent Galloway.
13 MR. GALLOWAY: Yes.
14 MR. SMARCH: Amanda Goff.
15 MS. GOFF: Yes.
16 MR. GALBREATH: Sam Marshall.
17 MR. MARSHALL: Yes.
18 MR. SMARCH: John Schwartz?
19 Dr. SCHWARTZ: Yes.
20 MR. SMARCH: Neal Whitten.
21 MR. WHITTEN: Yes.
22 MR. SMARCH: Terry Wimberley.
23 MR. WIMBERLEY: Yes.
24 MR. SMARCH: Motion is adopted.
25 MR. GALBREATH: So we're back on the

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1 original motion to accept this order as amended. Is
2 there any discussion? Because we already have a motion.
3 Do we have a second?(indiscernible) So is there any
4 further discussion? All right. Seeing none, roll call.
5 MR. SMARCH: The motion is to accept the
6 draft order as amended. Dr. Bible.
7 DR. BIBLE: Yeah.
8 MR. SMARCH: Elaine Boyd.
9 MS. BOYD: Yes.
10 MR. SMARCH: Dodd Galbreath.
11 MR. GALBREATH: Yes.
12 MR. SMARCH: Brent Galloway.
13 MR. GALLOWAY: Yes.
14 MR. SMARCH: Amanda Goff.
15 MS. GOFF: Yes.
16 MR. GALBREATH: Sam Marshall.
17 MR. MARSHALL: Yes.
18 MR. SMARCH: John Schwartz?
19 DR. SCHWARTZ: Yes.
20 MR. SMARCH: Neal Whitten.
21 MR. WHITTEN: Yes.
22 MR. SMARCH: Terry Wimberley.
23 MR. WIMBERLEY: Yes.
24 MR. SMARCH: Motion is adopted.
25 THE COURT: Thank you, members of the

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1 board. Thank you, counsel for both parties. We
2 appreciate your time. We are adjourned on this matter.
3 All involved (indiscernible). You're fine. I'm going
4 to ask about the next case, just as a housekeeping
5 matter. We do have one more case. Mr. Chair,
6 (indiscernible) prefer a brief recess to take that case
7 up. Would you want to prefer a large part to take that
8 case up? What is your practice?
9 MR. GALBREATH: Can I ask a question
10 about the next case that might help?
11 THE COURT: Sure.
12 MR. GALBREATH: (indiscernible) directly
13 toward Counsel. It's regarding time (indiscernible)
14 regarding (indiscernible) in your review, Your Honor.
15 THE COURT: Well, if that's the case, we
16 need to wait to actually (indiscernible) the case get on
17 the record about it, if that's what you mean.
18 MR. GALBREATH: Yes, sir. That's okay.
19 THE COURT: So from a scheduling
20 standpoint, what's the (indiscernible)?
21 MR. QUIST: If Your Honor agrees, if you
22 can call up the next case and if I can ask you a
23 procedural question about how the case should proceed.
24 If I hear an answer that indicates that something is
25 going to happen different than I imagined, then we'll

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1 continue. If you respond in such a way that I feel like
2 we're going to proceed with the hearing at that point, I
3 think we should take a recess for lunch and come back.
4 THE COURT: Again, I know we're still
5 talking. (indiscernible) anyone else (indiscernible)
6 Tellico Planes agree to (indiscernible).
7 MR. QUIST: Your Honor.
8 THE COURT: Yes, Sir.
9 MR. QUIST: This is Mr. Quist. I have a
10 question about the entry of this final order. I'm used
11 to using that term entry of an order. How will this
12 final order get entered and how will I know about it?
13 THE COURT: And then I'll let the counsel
14 and Mr. Chair correct me. The boards can be different.
15 But typically generally, that order would be drafted in
16 earnest. It will be signed off by the chair, will be
17 filed in our division--
18 MR. QUIST: With APD?
19 THE COURT: (indiscernible).
20 MR. QUIST: Will it be filed with APD?
21 THE COURT: Yes.
22 MR. QUIST: And then I'm part of that
23 service. And so when it's filed with APD,
24 THE COURT: You'll get a copy. Yes, for
25 sure.

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1 MR. QUIST: Okay. I'll look forward in
2 that manner. Thank you, Your Honor.
3 THE COURT: Thank you.
4 MR. GALBREATH: I'll have
5 (indiscernible).
6 THE COURT: Well, thank you. So there's
7 a request to go ahead and take up our next matter at
8 this time. So if anyone that's here (indiscernible),
9 feel free to join us.
10 MR. GALBREATH: And Your Honor, my first
11 question is since we're bringing them up and kind of
12 starting this on a daily basis, would it be appropriate
13 to take a recess after you started this and then come
14 back?
15 THE COURT: We certainly can. Again,
16 (indiscernible) at the beginning of the (indiscernible)
17 that we remember that when we are in recess we don't
18 discuss the content of the case. At this point it would
19 be the Aqua Green Utility case we will discuss. But
20 that's perfectly fine.
21 MR. GALBREATH: Thank you, Your Honor.
22 THE COURT: So I'll announce the case.
23 This is 04.30-252016A. Let me make sure I have the
24 right number because I was reading off the initial
25 order. As I stated, I am still Michael Begley. I'm

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1 still the administrative judge assigned to sit with the
2 board. As I stated earlier, the board makes the
3 decision in this case. Sir, would you mind announce
4 your name? You're here on behalf of Utility? Yeah.
5 The one on the right. (indiscernible)
6 MR. KENDALL: My name is Dart Kendall and
7 I'm the president of Aqua Green Utility and I represent
8 our customers today.
9 THE COURT: Who is counsel for the
10 department?
11 MS. ANGLIN: Good afternoon. Catherine
12 Anglin from the Department Of Environment Conservation,
13 office of general counsel.
14 THE COURT: Good Afternoon as well. So
15 in this case, this was an appeal from Aqua Green. Mr.
16 Chair, you said you had a question?
17 MR. GALBREATH: Yes, Your Honor. As I
18 respect enormously Mr. Kendall's desire to come here
19 today to express his interest in representing his
20 constituents regarding this deal, it's my understanding
21 that the previous ALK made a determination that
22 regarding the practicing of law in terms of representing
23 this particular position by (indiscernible) was an
24 issue. And Mr. Kendall is representing himself. He's
25 acknowledged in writing that he's not an attorney.

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1 My question to you, Your Honor, is with
2 all due respect to Mr. Kendall, do we have the option of
3 not hearing the case today because of lack of legal
4 representation?
5 THE COURT: And so I will first ask both
6 parties to give me your positions on this matter and
7 then we'll see where we have and agreement or
8 disagreement and then I can issue a directive if that
9 makes sense. So fair to say Mr. Kendall wishes to go
10 forward on behalf of this company. Is that a fair -- I
11 don't want to oversimplify.
12 MR. KENDALL: I would say you on behalf
13 of the customers of the company because they'll be the
14 ones who are affected. And when I had a previous
15 meeting with Judge Rieger (phonetic) and we discussed it
16 on the phone, I was brought up then, which is years ago,
17 however long ago it was, that I was not an attorney.
18 I'm not going to pretend to be an attorney. If it comes
19 to legal stuff, I would be unarmed. But he did say that
20 I could represent -- under the law, I can represent the
21 company.
22 It was argued that there's the
23 legislature has a law. I can represent the company.
24 And I understand it. So there's people here who can
25 correct me. But there was a determination, as I

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1 understand it, that in the supreme court of Tennessee,
2 that a person cannot practice law without a degree. And
3 I was permitted to go ahead but I was told, "You can't
4 cross examine anybody. You can't have any witnesses."
5 I actually never got a hearing.
6 The way I understand I did not get a
7 hearing was because the evidence that I presented that
8 the other party did not get access to it. But if you'll
9 look at page 40 on the brief, that evidence all
10 magically appeared. It's all in here. And it was put
11 into property files, which I was told it was supposed to
12 be the AP -- whatever the acronym is for those files.
13 You'll see the evidence presented there. So to this
14 point, I'm of the honest opinion that TDEC does not want
15 you to hear what I'm going to tell you today. They
16 absolutely do not want you to hear it.
17 THE COURT: Let me see what TDEC's
18 position is for that.
19 MS. ANGLIN: Yes. Thank you. As you're
20 aware, Tennessee prohibits the practice of law by anyone
21 who lacks a law license. And a corporation cannot
22 represent themselves through an individual
23 representative. And to the extent a representative can
24 represent and present on behalf of a corporation, that's
25 only limited to providing testimony so far as facts.

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1 I would argue that Mr. Kendall has
2 already exceeded that scope in his statements thus far
3 as to whether he can represent the corporation as to
4 arguing law already. While we have note, the issues
5 here are not complex. The scope is not complex. But to
6 the extent we move forward, it's important to the
7 department that the scope be limited to the issues on
8 appeal and to the initial order, and that the
9 representation of Aqua Green be limited to factual
10 statements and not of any legal argument. Thank you.
11 THE COURT: Well, Let me just explain.
12 The law says you can't represent the company. That's
13 just what it says. And matter of fact, even on the
14 secretary of state's website I'm reading from,
15 (indiscernible). And I'll just read that sentence
16 again. This is not the law. It's just a summary of it.
17 It says, "If a party in a case is a separate legal
18 entity such an LLC corporation," such as yourself,
19 "representatives of business entities may testify
20 (indiscernible) however they can't act as an attorney
21 for cross-examination, opening and closing statements."
22 In other words, you could testify. The
23 only issue there is we're not (indiscernible). There
24 are new facts here so there is no testimony. That would
25 have been prior. So I am not opposed to having this

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1 meeting scheduled to give you the opportunity of
2 representation for your company. But anything that you
3 would say here -- because this is a review -- I think
4 you were in the gallery when you did the last case.
5 Because this is a review of things that
6 are already decided as fact, anything that you would say
7 would have to be an argument. The law simply doesn't
8 allow it. And I'm sorry. I have to follow the law as
9 it's written. I am agreeable to rescheduling this case
10 just to give you that opportunity to seek counsel. But
11 you would be subjecting yourself to criminal
12 (indiscernible) if you try to represent without
13 unauthorized practice. And I would want that for you.
14 So I guess my question is would you like to reschedule
15 your case.
16 MR. KENDALL: Could I ask you a question
17 first?
18 THE COURT: Sure.
19 MR. KENDALL: Since there has been no
20 testimony to date whatsoever -- I don't know that the
21 facts are actually in the record other than the stuff
22 that I put in. All I want to do is get tested -- I
23 don't want to -- after what happened and what the
24 ramifications of it are. As a small utility, the legal
25 fees will be in excess of problem with the yearly

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1 income. And I ask you, please consider that as the
2 board can make rulings to hear.
3 If at any point I'm doing something
4 improper, I would certainly be -- if you say anything,
5 "You can't say that," or, "You shouldn't say that. Or
6 if the board says that, I'll stop immediately. I'm not
7 going to be a rude person.
8 THE COURT: Sure. (indiscernible). This
9 is not me saying that. But if it helps you to know the
10 initial order in this case has a factual background. It
11 refers to the permit and it goes on -- and I'm going to
12 read all through this order. It goes on page 3 of 14
13 down to -- table here. Sorry, I'm scrolling page the
14 top of page 8 of 14. So between pages 3 and 8 of 14,
15 previous quarter are facts that were found.
16 This case was decided on on the summary
17 judgment. That means that there was no dispute as to
18 the material facts that we decided (indiscernible) what
19 should happen. So to the extent there haven't been any
20 facts, there actually have. And it's what you see
21 between pages 3 and 8.
22 So if you would like, we can go forward
23 with the hearing. The board will be using pages 3
24 through 8 to make their decision. You would not be
25 permitted to make an argument. Counsel for the

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1 department is trying to say something. Am I mistaken?
2 Please correct me.
3 MS. ANGLIN: I just wanted to add that
4 there's additional facts on pages 9 and 10.
5 MR. GALBREATH: So I stopped too early.
6 I'm sorry. Yeah. I stopped to access summary judgment
7 standard. But yes, there are (indiscernible). So I
8 guess what I'm trying to explain to you, my way of
9 explanation, is yes, you did give testimony under oath
10 in the prior hearing. Because you didn't get to a full
11 hearing because you (indiscernible) because the case was
12 decided on what we call summary judgment.
13 To the extent you might be concerned that
14 there are facts in this case, there are facts in this
15 case and it's what you see in this order. And that's
16 what the board is going to be using when they make their
17 decision.
18 So that's one of two options. The board
19 can make the decision based on the facts as outlined in
20 the order. Of course you can (indiscernible) your
21 business but you're not going to be allowed to make any
22 arguments or statements. They're going to go with
23 what's in this document. Or (indiscernible) to have the
24 case rescheduled and you can seek counsel. What is your
25 preference?

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1 MR. KENDALL: (indiscernible) included in
2 the documents, are you talking about the packet that was
3 emailed out? This.
4 THE COURT: I'm talking about the initial
5 order. Let's see here. (indiscernible) the 14th of
6 November, in this past year, that order contains factual
7 background. And that is what will be discussed.
8 MS. ANGLIN: If I may, it starts on page
9 288 of the record.
10 MR. GALBREATH: So if you have the record
11 that was sent to everyone.
12 MR. KENDALL: Yeah (indiscernible)
13 MR. GALBREATH: So, Your Honor, if I'm
14 understanding correctly (indiscernible) representation
15 of facts (indiscernible) one side because defendant
16 doesn't have legal counsel.
17 THE COURT: Technically speaking, it's
18 not (indiscernible). All I'm suggesting is there's not
19 going to be oral argument if Mr. Kendall wants to
20 proceed (indiscernible). Then you will decide to based
21 on facts that are already (indiscernible).
22 MR. GALBREATH: But going back to my
23 original question, I guess what I'm trying to ascertain
24 on the board's behalf without prejudice on the board's
25 decision to do whatever they want is basically the same.

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1 Could the board choose not to hear this because of the
2 lack of presentation?
3 THE COURT: No. That's why I'm giving an
4 opportunity to Mr. Kendall to decide what he wants to
5 do. If he wants to go forward and leave
6 (indiscernible). If he wishes to continue in case then
7 obviously it's going to be up to him.
8 MR. GALBREATH: And that's the part I was
9 concerned about. I wasn't sure if he understood his
10 role today.
11 THE COURT: Right.
12 MR. GALBREATH: And this clarified that.
13 THE COURT: Sure. Mr. Kendall, what's
14 your preference?
15 MR. KENDALL: I certainly didn't
16 understand because Judge Rieger said that I could
17 represent the company throughout this. That was his
18 part of his ruling. So now to not be able to even just
19 give testimony -- because that's all I want to do. The
20 evidence is before you already. I would probably give
21 you a much more streamlined version because this is a
22 big packet and I do not want to waste your time. But I
23 don't know.
24 I mean, I can't use the limited resources
25 that the utility has for legal fees and then not be able

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1 to maintain the utility. I literally will not be able
2 to maintain the utility. So we're at that point. So
3 it's up to you. I mean, you guys (indiscernible) get to
4 make the rules. If you don't want to hear from me, just
5 say you don't. I'll leave. That'll be that.
6 THE COURT: Or actually let me go ahead
7 and keep control of this for the board because this is
8 still a free hearing motion. Now it's up to you. This
9 is your case. This is what the law says.
10 You are welcome to let the board go
11 forward (indiscernible) that are here. Or again,
12 there's your other options is to say, "I'd like to ask
13 for a reschedule. In the interim, I'll seek an attorney
14 if I can," which may or may not have legal
15 (indiscernible) available in the area, which you can
16 check as well. And if you weren't able to get one, you
17 can come back and (indiscernible). It's all
18 (indiscernible) your case to decide how you want to move
19 forward.
20 MR. KENDALL: As I said, as far as the
21 utility goes, we don't have a choice. I cannot maintain
22 the utility and tell you what's going on. This will
23 greatly affect a lot of people and unfortunately you
24 won't get to hear that. That's your choice. All I ask
25 is to present testimony because what facts are in order

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1 for her facts? Not mine, her facts. It's one-sided.
2 So I can't put the utility in that financial situation.
3 THE COURT: Are you saying you'd like to
4 go forward as is or are you saying like to reschedule?
5 MR. KENDALL: I guess we go for it as it
6 is. Rescheduling is not going to change my part. I can
7 sit here and I guess she'll get (indiscernible) and I'll
8 sit here and then go. Or I can go now if you all want
9 to save your time.
10 THE COURT: So just so it's clear for the
11 record (indiscernible) Judge Rieger said, on page 2 of
12 14, he would consider factual assertions and your
13 response in opposition of the summary judgment to the
14 extent they don't cross into the practice
15 (indiscernible) testimony. He said (indiscernible)
16 responded to the motion.
17 And so he considered what he put in that
18 response even though technically that -- he basically
19 said, "I'll weigh the evidence and decide what is or
20 isn't an authorized practice of law." So to use that,
21 he does not say (indiscernible) testimony is
22 permissible. So am I hearing you to say you would like
23 to go forward today?
24 MR. KENDALL: If we postpone it, I will
25 not be able to come back with an attorney. I'm not

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1 going to push the utility's resources to the point that
2 I cannot maintain my customers. Okay?
3 THE COURT: So your decision is to go
4 forward today.
5 MR. KENDALL: I have no other choice.
6 THE COURT: Understand the policy side.
7 So this is your decision. I can't make it for you.
8 Okay. All right. So Mr. Chair, sounds like we'll be
9 forward as we've outlined a (indiscernible). The facts
10 are still the facts. Just like the last case, they're
11 going to be undisputed. So is the board's preference to
12 now have a short recess or to take (indiscernible)?
13 MR. GALBREATH: That's the question. We
14 have one less testimony to hear from today. It doesn't
15 mean that it won't push us past the lunch hour if you're
16 hungry. So (indiscernible) going to ask a question here
17 in a minute as well. But please be thinking about
18 whether or not you want to take a recess now and come
19 back and hear this or whether you want to hear it now
20 and then have a lunch break, or just skip lunch and hop
21 out the rest of the day. So what's your preference?
22 MR. WIMBERLEY: (indiscernible) a short
23 reset either way.
24 MS. BOYD: Can I just ask a question? I
25 just want to ask a basic question, I think, of the judge

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1 and maybe our counsel as well, because my confusion is
2 that the SOP rules require the petitioner to specify
3 what terms or conditions it's appealing. But the appeal
4 letter basically indicated that the petitioner disagrees
5 with the changes to his permit. So there are no
6 specific terms or conditions. I'm not sure what we're
7 considering.

8 THE COURT: You will be taking that into
9 account to make your order. I know that's not the
10 (indiscernible). But that is the way it works.

11 MR. GALBREATH: Without objection,
12 probably take a 30-minute recess. So grab a quick
13 lunch, bathroom break, see you back here at five after
14 1:00.

15 (Off the record.)

16 THE COURT: (indiscernible) we will go
17 back on the record.

18 MS. BOYD: We all are.

19 MR. KENDALL: I want to ask for a
20 clarification.

21 THE COURT: Yes, sir. Sure.

22 MR. KENDALL: In the facts that you say
23 that we're going to consider --

24 THE COURT: That's right on that page.

25 MR. KENDALL: -- in that page 290 -- I'll

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1 give you a minute to get it.

2 THE COURT: Go ahead.

3 MR. KENDALL: It says, "While the general
4 assembly has seen fit to allow corporate entities to
5 participate in administrative hearings through their
6 representatives." And then later on the page it says --
7 they're talking about, "However, the UPA does permit
8 corporate participation in contested case proceedings by
9 duly authorized representatives in offering facts
10 through narrative testimony. It does not ordinarily
11 constitute the unauthorized practice of law.

12 Accordingly, the undersigned will
13 consider the factual assertions, Mr. Kendall's response
14 in opposition on a limited basis to the extent that they
15 do not cross into practicing law." And he actually
16 ruled against on some facts that I feel are in dispute.
17 But I'm not an attorney but this reads to me that I can
18 give a narrative. And this is part of the facts of that
19 you mentioned we have to stay in.

20 THE COURT: That was related to the last
21 hearing, the last setting. This is an appeal. This is
22 a different setting. That was related to Judge Rieger's
23 proceeding. No one's given facts in this proceeding.
24 The department's not either. This is solely based on
25 what this order of Judge Rieger says. They're not

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1 presenting new facts either. They're just making an
2 argument because they have an attorney of what they
3 think those facts should mean or not. There are no new
4 facts (indiscernible).

5 MR. KENDALL: So this UPA does not apply
6 to this? These rules do not apply to this?

7 THE COURT: It does. We are under the
8 UPA hearing. That is why I'm here. And this is why
9 having an attorney -- this is the last proceeding. At
10 that proceeding, there were facts put in proof. There
11 was an initial order and that order contains those
12 facts. It is the facts from the initial order upon
13 which the board is going to review. You may recall
14 again. I know you (indiscernible). I even made sure in
15 the last case to reiterate that the board was finding no
16 new facts.

17 The board will find no new facts in this
18 case. They are solely reviewing based off of this
19 order. Yes, Judge Rieger was correct. His applied to
20 the previous proceeding. This proceeding has no new
21 facts, no live testimony, nothing like that. They are
22 reviewing the decision to see if they agree or disagree.

23 MR. KENDALL: That makes sense.

24 THE COURT: I know it's not -- I know
25 it's not what you -- I know you want to give testimony,

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1 but they're not getting testimony (indiscernible).

2 MR. KENDALL: I guess my concerns, I've
3 not been able to dispute the facts at all. And --

4 THE COURT: Well --

5 MR. KENDALL: They are --

6 THE COURT: -- you did dispute the facts
7 by way of summary judgment response at Judge Rieger's
8 level. You responded to their motion of summary
9 judgment. Correct?

10 MR. KENDALL: I responded that I request
11 the hearing --

12 THE COURT: I'm reading in this that you
13 filed -- did you file nothing with Judge Rieger?

14 MR. KENDALL: I filed a request earlier
15 in. I have to (indiscernible). It's a big file. But I
16 requested asking for the hearing --

17 THE COURT: That's right.

18 MR. KENDALL: -- and it was a summary
19 judgment without the hearing. And I requested at that
20 that I would present evidence.

21 THE COURT: And did you have a conference
22 call or filing or conversation with Judge Rieger and
23 counsel for the department before he issued the decision
24 on the summary judgment?

25 MR. KENDALL: No.

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1 THE COURT: You never spoke with Judge
2 Rieger?
3 MR. KENDALL: I spoke with Judge Rieger
4 back in May and he said this is the way we're going to
5 do it. Because I remember I asked, "How do we give her
6 -- do I give her a copy of the files?" He said, "No. I
7 want to put it in the APD as far as anything I wanted to
8 present." But other than that phone call back then
9 saying that and before this was issued, no. I have not.
10 THE COURT: And you submitted documents
11 per that instruction. Correct?
12 MR. KENDALL: Yes. I did.
13 THE COURT: And the department did the
14 same, I assume?
15 MR. KENDALL: Yes.
16 THE COURT: The department presented no
17 way witnesses either. Correct?
18 MS. ANGLIN: There's a distinction. The
19 department served documents and authenticated documents
20 with its motion for summary judgment. Whereas Mr.
21 Kendall emailed documents to APD, did not copy me, and
22 they're not authenticated. And he did file a response
23 of sorts to the motion for summary judgment, which is
24 what Judge Rieger considered.
25 THE COURT: So we are not here to

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1 relitigate a case that's already been decided. I'm only
2 going into this to explain that what Judge Rieger said
3 is 100 percent correct. And that was an opportunity
4 that was given to everyone at the last setting. They're
5 not giving live testimony, you're not giving live
6 testimony, they're not entering any new documents,
7 you're not entering any new documents. Just like the
8 last case.
9 MR. KENDALL: I do not wish to enter any
10 new documents. My narrative is based on their
11 documents.
12 THE COURT: Well, there is no giving
13 proof or testimony in this case. And as we discussed
14 earlier, the law specifically doesn't allow you to make
15 an argument as counsel for liability company or
16 otherwise. Excuse me. With that said, we're ready to
17 go. Still ready to go forward like we discussed before?
18 MR. KENDALL: I'm just here at your
19 mercy.
20 THE COURT: No. You're not. You have a
21 decision. I realize you don't -- I realize that's a
22 difficult decision for you to make. But again, on the
23 record, this is a public hearing. You do have a
24 decision to make. I want to make sure I know what
25 decision you're making.

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1 MR. KENDALL: I really don't have enough
2 information to make a good decision honestly.
3 THE COURT: Does that mean you'd like to
4 ask to rescheduling case or is that --
5 MR. KENDALL: I mean, I don't know if --
6 if I come back with an attorney, would I be able to
7 present evidence then?
8 THE COURT: Nobody's presenting any new
9 evidence. Your attorney would be able to do exactly
10 what you heard in the last case. Kind of make an
11 argument from your position. But there is no new
12 evidence. That was at the last trial. So your attorney
13 would be allowed to do what you saw the last hearing.
14 MR. KENDALL: I don't know enough about
15 it to put the utility at risk. So do whatever we need
16 to do and that's what we got to do. I've read this and
17 understood that I could -- it's hard for me as a utility
18 to understand why I can't talk this over. I'm not an
19 attorney. I'm just --
20 THE COURT: Exactly why --
21 MR. KENDALL: -- a working class guy.
22 THE COURT: Exactly. I --
23 MR. KENDALL: If their checks and
24 balances are on TDEC, how can they do it? If I don't
25 have the lunch your money for an attorney.

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1 THE COURT: This is not a de novo appeal
2 this is not a redo of the first hearing. This is a
3 review of that order. And that's what we're doing here.
4 MR. KENDALL: I can understand if I had -
5 -
6 THE COURT: So once again, I need you to
7 tell me if you would like to go forward as we discussed
8 earlier or if you'd like to request a continuance, seek
9 out an attorney or another option that you might
10 (indiscernible).
11 MR. KENDALL: I don't know the options.
12 I don't know enough about it to make that. I really --
13 THE COURT: You're going to have to make
14 one of those two.
15 MR. KENDALL: Carry on.
16 THE COURT: So we'll proceed like we
17 discussed earlier. With that, members of the board, we
18 are, as I stated, back on the record. This is Aqua
19 Green Utility matter. It's docket 04.03-252016J.
20 Members of the board, as you heard me speak to Mr.
21 Kendall, this is a review of the order. The department
22 will be (indiscernible) no new evidence, no new
23 testimony. We will permit counsel for the department to
24 make a brief oral argument, if you would like. If there
25 are no questions from the board, my eyes tell me we

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1 still have a quorum, just to confirm that.
2 MR. SMARCH: Yes. We still have the
3 quorum.
4 THE COURT: And I will ask before we
5 start. Members of the board, you understand the case
6 title, you heard from Mr. Kendall. Anyone have a
7 conflict that you're aware of that you'd like to bring
8 up now? Okay. Seeing nothing, counsel for the
9 department, if you'd like to make an argument?
10 MS. ANGLIN: Yes, Your Honor. Do I need
11 to turn this on?
12 MR. GALBREATH: Yes.
13 MS. ANGLIN: Can you hear me?
14 MR. GALBREATH: That's because there's a
15 mic on the laptop.
16 MR. SMARCH: It doesn't have one of these.
17 MS. ANGLIN: Well, let me know if you
18 can't hear me. And Ms. Mr. Kendall, if you would like
19 time to evaluate your options, the department is
20 agreeable to postpone for you to consider your options
21 if you would like to do that.
22 MR. GALBREATH: I mean, if you all want
23 to do that, I don't know what my options are. I would
24 have to find a way to find out what that is.
25 MS. ANGLIN: Do you want time to consider

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1 that?
2 MR. KENDALL: I mean --
3 THE COURT: So here's what would happen.
4 Let me jump back in. If either party requests
5 continuance and there's not an objection, the two of you
6 can talk together by way of settlement or other
7 negotiations or some other way of resolving this dispute
8 short of coming back before the board. That is
9 something that you all could do while waiting for the
10 next trial. Of course, (indiscernible) attorney here at
11 that time as well. So you guys can decide again if you
12 want to reschedule this case or go forward? I need an
13 answer and I need us to be able to go or (indiscernible)
14 take away.
15 MR. KENDALL: If you want to reschedule,
16 I can try to find out. I don't know that --
17 MS. ANGLIN: Can we --
18 MR. GALBREATH: Sure Go ahead.
19 THE COURT: What were you going to say?
20 MS. ANGLIN: Could we have a few minutes
21 to discuss --
22 THE COURT: Sure.
23 MS. ANGLIN: -- while you pick up other
24 matters?
25 THE COURT: Yeah. The board might have

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1 other matters. Yeah. You guys take a quick recess for
2 this for a couple minutes. You all go talk, come on
3 back in. When you finish, let me know. Okay?
4 MS. ANGLIN: Okay.
5 THE COURT: Thanks.
6 MR. GALBREATH: Your Honor, apparently we
7 have one unfinished out of business from the previous
8 hearing that's been brought for our attention that we
9 may need your assistance. Ms. Vann would you like to
10 explain that to Your Honor?
11 MS. VANN: Yes. Judge Begley, the board
12 did not deliberately make a decision on the Tellico
13 Plains' appeal of the denial of its motion for cost and
14 award of the department's cos, because that came after
15 the initial order. So the board just needs to decide
16 how it wants to handle that portion.
17 THE COURT: Oh, we can go back into that
18 matter and restart that record. I will note if we have
19 some parties that aren't here anymore.
20 MS. ANGLIN: We have called Mr. Quist and
21 emailed him about this with what's -- so we're hoping to
22 hear from him shortly.
23 MR. GALBREATH: He's probably
24 (indiscernible). This is regarding whether or not you
25 want to impose costs?

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1 MS. VANN: No. It's just motions were
2 filed subsequent to the initial order. The Tellico
3 Plains and the department each requested their costs and
4 Judge Garland denied Tellico Plains' motion and granted
5 the department's motion for APD costs. Tellico Plains
6 appealed those decisions but obviously that wasn't
7 rolled into the initial order like any other. All the
8 previous orders were. So there was argument about cost.
9 The board just did not deliberate on that issue. So
10 it's not part of the board's order.
11 THE COURT: So it's not in the order at
12 all, is that correct, as it currently stands?
13 MS. VANN: Correct. Because the board
14 did not deliberate on that. Right.
15 THE COURT: So the only thing I can say
16 we can do is you all can go ahead and do that. But
17 without the approval of opposing counselor, you're going
18 to have to come back and do it again if he says he's not
19 okay with it. It's the only way it can be fair and open
20 to everyone. So --
21 MR. GALBREATH: Your Honor, can I ask a
22 question.
23 THE COURT: Sure.
24 MR. GALBREATH: So there was no language
25 in your draft order that we voted on that addressed that

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1 second appeal?
2 MS. VANN: Correct. All the board
3 discussed at that time was the initial order. Correct.
4 Yes.
5 THE COURT: Sorry. You have a follow-up?
6 MR. GALBREATH: I just want to make sure
7 that what we discussed versus what was written were the
8 same thing. So the draft that you put on the screen did
9 not address any of that?
10 MS. VANN: No. Yeah. Because we only --
11 MR. GALBREATH: Because if it was in
12 there --
13 MS. VANN: Correct. We only focus on
14 that portion --
15 MR. GALBREATH: -- and we didn't discuss
16 it, maybe --
17 MS. ANGLIN: Correct. So the board has
18 not deliberated on those issues yet.
19 MR. GALBREATH: Nor was it in the written
20 draft? Okay.
21 THE COURT: So as your order stands, it
22 does not address the cost. So essentially, it would be
23 a new cost?
24 MR. GALBREATH: Yeah. It kind of makes
25 sense.

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1 THE COURT: I realize we probably should
2 have dealt with both of those as two separate items.
3 (indiscernible) we don't get two separate items like
4 that in (indiscernible). So it makes sense to me that
5 that's probably going need to come back as a separate
6 agenda.
7 MS. VANN: If the board handles it that
8 way, I mean we can definitely do that. What that would
9 mean is, though, there's going to be two different
10 appeal clocks on those two board orders.
11 MR. GALBREATH: I will tell the board.
12 You don't have to change your order. You can keep your
13 order and it'll say recess. If that's something you're
14 like, "Oh, well, we wanted to do this too and we didn't
15 do it," that's a different story. If it's the latter,
16 then certainly you can have those deliberations. We are
17 still open (indiscernible). The only issue there is we
18 don't have opposing counsel. Now maybe opposing counsel
19 says, "I consent to waive my presence." But you don't
20 know that he's going to do that if he's afforded that
21 opportunity. So one other question, Your Honor. Since
22 you closed the testimony period for both counsels, is it
23 fair to say that even though the opposing counsel is not
24 present now, previously or if you close that part of the
25 hearing, they couldn't contribute anything anyway.

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1 THE COURT: No. Not at all --
2 MR. GALBREATH: (indiscernible) us going
3 forward right now.
4 THE COURT: Everything that was stated on
5 the record will be for your consideration. There's no
6 (indiscernible) anyway (indiscernible) the right to the
7 (indiscernible) wants to liberate. That's all.
8 MR. GALBREATH: I'm comfortable going
9 forward unless you all worry about the president of
10 their right to be president being violated in some way
11 that would put our decision in jeopardy and have to
12 revisit.
13 THE COURT: How about we table that for
14 about five minutes?
15 MR. GALBREATH: Yes.
16 THE COURT: So all that we just stated
17 was we're still in recess. You're going back on the
18 record with the (Aqua Green Matter). That's 252016. Mr.
19 Kendall and counsel for department had an opportunity to
20 discuss. What would you all like to do?
21 MS. ANGLIN: The department's ready to
22 move forward.
23 THE COURT: Mr. Kendall, is that what you
24 all agree to?
25 MR. KENDALL: We didn't agree to anything

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1 but we can move forward.
2 THE COURT: So we will pick up. Counsel
3 if you'd like to make your argument, go ahead.
4 MS. ANGLIN: Yes. Members of the board -
5 - members of the board, Judge Begley, can you hear me?
6 THE COURT: Yes.
7 MS. ANGLIN: This case involves Aqua
8 Green Utility, Inc, Aqua Green's appeal of a state
9 operating permit identified as SOP-19004. We will call
10 this the 2025 permit. It was issued by the department
11 pursuant to the Tennessee Water Quality control Act of
12 1977. The state operating permits are issued for the
13 operation of nondischarging sewage treatment works,
14 including, like in this case, land application systems.
15 The department first issued this
16 particular permit to Aqua Green for the Bulls Gap Love's
17 Travel Stop in Greene county in 2019 for a five-year
18 term. The permit was authorized, the operation of the
19 trickling filter with drip dispersal system with a
20 design capacity of 0.0137 million gallons per day for
21 the partially treated wastewater sewage to be disposed
22 on approximately 1.2 acres of suitable soils.
23 The permit required the drip irrigation
24 system to be operated in a manner preventing the
25 creation of a health hazard or nuisance and required all

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1 wastewater to be properly treated and comply with
2 specified limitations for land application. The permit
3 prohibited certain things including discharge of
4 wastewater to surface waters or to a location likely to
5 enter surface waters and also prohibited instances of
6 surface saturation, ponding, pooling within the land
7 application area as a result of system operation.
8 The department conducted a site survey in
9 January 2024 and completed a compliance inspection of
10 the site in August 2024. During these inspections,
11 Department staff observed evidence of hydraulically
12 overloaded site soil conditions within the land
13 application area, including evidence of the presence of
14 pond saturated soil conditions, ponded effluent, and
15 long term ponding.
16 And during the January 2024 survey,
17 ponding conditions were observed to result in overland
18 flow from the land application area for system leaving
19 the land application area and entering surface waters or
20 drainage features that lead to surface waters. The 2019
21 original permit expired on August 15th, 2024 and the
22 petitioner filed an application to renew on October 9th
23 of that year.
24 The department issued a notice and draft
25 of the new permit on October 22nd, 2024 and this notice

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1 and draft advised the petitioner of its right to notify
2 the department of objections within 30 days. And Mr.
3 Kendall only provided two comments on that draft permit
4 which we'll discuss more further. On January 8th, the
5 department reissued this permit, which is what we'll
6 just say as the 2025 permit. That's the current permit
7 that's in effect.
8 And the SOP rules promulgated by this
9 board require that the petitioner specify what terms or
10 conditions they are appealing in their petition and that
11 they specify the basis for their appeal. And that's
12 under Tennessee comprehensive rules and regulations
13 chapter 400:4006.13 subsection (2). The SOP rules also
14 require the petitioner to state a claim for relief based
15 on an alleged inconsistency with the act or with the SOP
16 rules.
17 Aqua Green failed to meet the threshold
18 requirements for appealing a permit. While Aqua Green
19 timely appealed the permit, their petition to appeal was
20 a one-page letter dated January 31st, 2025 and it merely
21 stated the petitioner disagrees with the changes to its
22 permit SOP-19004 and that it wishes to appeal this
23 matter.
24 However, this petition doesn't comply
25 with the threshold requirements for a permit to appeal

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1 because it does not identify any portion of the permit
2 it is agreed by, nor does it specify any terms or
3 conditions it seeks to appeal. On this basis alone,
4 dismissal is appropriate. In addition and as a
5 secondary basis, the petitioner failed to state a claim
6 for relief based on any alleged inconsistency with the
7 act or SOP rules.
8 Its petition merely disagreeing with the
9 changes to the permit fails to specify any inconsistency
10 whatsoever. And no such claim can be made because none
11 of the changes to the permit are inconsistent with the
12 act or the SOP rules. And as Judge Rieger observed,
13 many of the changes from the 2019 permit to the 2025
14 permit were not substantive. Most have clarity rule
15 citations or remove inapplicable requirements.
16 The only two concerns Mr. Kendall raised
17 during the comment period were related to the inspection
18 frequency and the addition of E. coli sampling. The
19 2025 permit kept the 14-day default inspection frequency
20 that was also in the 2019 permit but it removed an
21 optional phrase that allowed Aqua Green to adjust this
22 inspection frequency.
23 And the rationale in the 2025 permit
24 clearly explained that this inspection frequency
25 reverted to the default frequency because of the

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1 hydraulically overloaded soil conditions documented
2 during the inspections. And the optional phrase that
3 was removed or in accordance with an operating and
4 maintenance inspection allows potential deviation from
5 the 14-day inspection frequency. However, it's not
6 included in either the act or SOP rules.
7 There's no requirement that permits must
8 include this optional phrase. Instead, the act and
9 rules require the division to set inspection schedules
10 needed to ensure compliance. And then the require
11 requirement in the 2025 permit related to E. coli
12 sampling specifically states that it only applies if the
13 area is not fenced. The area is fenced. So generally
14 this requirement doesn't apply and it plainly states in
15 the permit. If something were to happen and it becomes
16 unfenced, then that condition comes into play.
17 The petitioner is not aggrieved by the
18 addition of E. coli sampling since fencing is in place.
19 So all we're talking about is sampling once every 14
20 days, which is the default frequency. And that was
21 reverted to because of concerns that were observed
22 during inspections. And they're not agreed by the E.
23 coli sampling.
24 So as a second basis, that dismissal is
25 appropriate. Aqua Green failed to state a claim for

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1 relief based on any inconsistency with the act or SOP
2 rules, even if you consider the two comments that Mr.
3 Kendall made during the comment period. On these basis,
4 the department requests that the board adopt the initial
5 order as stated. That's the basic argument. I can go
6 into more about summary judgment standard or if you have
7 additional questions, I'm happy to answer those. But
8 that's the gist of the argument. And that's what it
9 comes down to.

10 MR. GALBREATH: Any questions from
11 members of the board? Dr. Bible.

12 DR. BIBLE: Yeah. You stated that the
13 soils had become waterlogged. Am I correct?

14 MS. ANGLIN: I didn't specifically use
15 those words, but --

16 DR. BIBLE: What is --

17 MS. ANGLIN: -- hydraulically overloaded.

18 MR. GALBREATH: Hydraulically overloaded.
19 Okay. That's fine. What's the normal cure for that?

20 MS. ANGLIN: Now, I'm not a technical
21 person but from what I've seen, go inspect more, try and
22 figure out what's going on. Try to identify problems,
23 things that can be fixed. And sometimes it takes
24 acquiring more area, that sort of thing. But certainly
25 an evaluation of what's going on. And throughout this

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1 process, the petitioner has made no indication of making
2 improvements to the system.

3 DR. BIBLE: Thank you.

4 MR. GALBREATH: Any other board member
5 with a question? I realize this puts things in a
6 different perspective because we're just hearing your
7 views. Can you summarize the primary, I guess, position
8 of this utility? Does it seem to focus on procedures
9 and frequency of testing and types of testing as opposed
10 to an admission that there was pollution that actually
11 occurred, ponding water that could enter streams? Did
12 they ever again that the system was not working
13 properly, I guess it's the right (indiscernible).

14 MS. ANGLIN: No. I have not seen any
15 indication of that. The concerns that I've seen raised
16 relate mostly to cost from inspecting more often.
17 Though the department would be amenable -- if the
18 conditions are resolved, the department would be
19 amenable to reconsidering the permit. Permits are
20 modified on a regular basis. So that could be done once
21 situation's resolved.

22 MR. GALBREATH: So I've been out of the
23 sort of immersed TDEC world for a while but I remember
24 EPA Used to be concerned about financial capacity of
25 utilities, their ability to resource their job of

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1 protecting waters through their wastewater treatment.
2 And is there any kind of legal -- are there any kind of
3 legal concerns or legal issues around financial capacity
4 that might help them understand that those issues also
5 bear significantly on their ability to avoid getting in
6 this kind of situation?

7 MS. ANGLIN: That's a very good question.
8 I don't know that I'm fully informed as to how to
9 respond to that. All that's being asked is an
10 inspection frequency so as to ensure they're compliant
11 with their permit. We're not in a position to allow
12 permit noncompliance to avoid more frequent inspections.

13 MR. GALBREATH: Got it. The reason I
14 bring that up is that you mentioned that's part of their
15 basis is the cost. In their questions to His Honor
16 concerning legal representation, they stated that they
17 couldn't afford it. Financial capacity seems to be kind
18 of a central issue here. So it might be something you
19 can be audited on. Ms. Boyd just stated that. She
20 might want to restate for the record what she knows
21 about that.

22 MS. BOYD: I was just going to mention
23 that there is a portion of the comptroller that assesses
24 the financial capacity of utility systems. That's a
25 whole separate assessment that's done. And I do have a

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1 comment when you finish.

2 MR. GALBREATH: So I guess for the board
3 benefit, I just wanted to say, if you're not managing
4 the business well, other things are going to be
5 problematic over time. And there are other vulnerable
6 aspects of that that could be -- it's not privy in the
7 board today to address that specifically. But this
8 could get more complicated if this is not addressed
9 permanently.

10 And so what the department is trying to
11 do is to correct that. It's a signal that other changes
12 could be made to maybe avoid other engagements with
13 other entities of state government that could be
14 signaled to come looking for those things as well. I
15 realize that's not a board decision, it's not part of
16 our deliberation. But I guess I'm saying it's the
17 benefit of those who are here present. This is
18 something that the department's trying to help them
19 recognize needs to be addressed.

20 MS. ANGLIN: Yes. Over the past two
21 years, the department's taken a closer look at these
22 type of systems in multiple different ways. And one of
23 the things that it's done across the board over the past
24 couple of years is when there are systems that there are
25 concerns about the way that they're operating, when the

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1 permit comes back up for renewal, they're going to the
2 default 14-day inspection.
3 That's being done across the board, only
4 on systems where there's concerns. Aqua Green has other
5 permits. That trust change wasn't made on his other
6 permits. Only for this particular site.
7 MR. GALBREATH: And it sounds like you're
8 also maybe implicitly referring to scale when you're
9 talking about small systems of this nature when you made
10 that previous reference concern --
11 MS. ANGLIN: Yes.
12 MR. GALBREATH: -- I just want to confirm
13 --
14 MS. ANGLIN: By their nature, these type
15 of systems are generally small.
16 MR. GALBREATH: Any other comments?
17 MS. BOYD: Yes. Elaine Boyd. And I'm
18 the commissioner's designee for TDEC. And so I feel as
19 though I have to say I respect Mr. Kendall's concerns
20 with the functioning of the utility but I feel it's
21 important for us to consider that it would be setting a
22 precedent for us to consider an appeal based on a
23 permittee's dissatisfaction with their permit. They
24 haven't specified or alleged inconsistencies with the
25 act or rules. So if we open up the door to any

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1 permittee who's dissatisfied with the permit that we
2 would consider appeals, I think we need to be really
3 cautious. I just want to make that statement.
4 MS. ANGLIN: And may I state? If a
5 permittee is not satisfied with their permit, there is a
6 process for them to appeal it by following the process,
7 which was not done here.
8 MS. GOFF: This is Amanda Goff. I've got
9 a quick question. Is it specifically stated in the
10 rules and regulations or the law change about the
11 inspection frequency?
12 MS. ANGLIN: Neither the Water Quality
13 Control Act or the SOP rules specify a specific
14 frequency for sampling. It's more of a general that --
15 or inspection. It's more of a general that -- so that
16 you can get permit compliance.
17 MR. GALBREATH: And in this case it seems
18 to be triggered by the ponding events.
19 MS. ANGLIN: And even if it wasn't --
20 even if there weren't conditions -- even if there
21 weren't the inspection results that brought those
22 concerns and we still required 14-day inspection
23 frequency, that's not inconsistent with the act or SOP
24 rules.
25 MR. GALBREATH: Yes.

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1 DR. SCHWARTZ: I just have a question.
2 This facility that's failing, if I read correctly, it's
3 serving the Love's Travel Stop and Bull Run. Is that
4 the only connection that's going to the system or is
5 that it?
6 MS. ANGLIN: Yes. And the way these land
7 application systems work, is they're generally in rural
8 areas. Like, at a Dollar General store or a rural area
9 that's not connected to a larger system. And so you
10 have primary secondary treatment near the building. And
11 then you have a land application area and drug appeal
12 where it's dispersed and the final treatment is within
13 that land application area in the soil.
14 DR. SCHWARTZ: Yeah. So what level of
15 responsibility does Love's as a corporation have to this
16 permit? I mean, they basically have hired Aqua Green
17 Utility to service them. But ultimately, Love's, that's
18 a pretty big corporation. They have sufficient funds to
19 probably correct the problem I would think. It's not
20 like a couple homes with rural people or something. But
21 sorry. It's --
22 MS. ANGLIN: I don't know that that's a
23 question for me to answer.
24 DR. SCHWARTZ: Yeah. Maybe I --
25 MS. ANGLIN: The permittee is Aqua Green

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1 utility.
2 DR. SCHWARTZ: Yeah. Main thing is I just
3 wanted to make sure Love's was the one that was being
4 serviced by the utility.
5 MS. ANGLIN: That's my understanding
6 though.
7 DR. SCHWARTZ: Thank you.
8 MS. ANGLIN: I haven't verified that.
9 MR. GALBREATH: That kind of brings up a
10 bit of a policy concern. It kind of reminds me of the
11 chicken farmer situation where we had big corporate
12 chicken processors who started buying chickens from
13 independent chicken houses instead of owning them,
14 essentially cutting them off from a lot of record
15 (indiscernible) responsibility and liability.
16 And this whole issue of financial
17 capacity is what -- that's the tide that raises all the
18 ships. If they don't have the money to (indiscernible)
19 legal representation, have proper resources to do the
20 frequency of water sampling that's required, the sure
21 thing's going to happen because there are no signals
22 that something needs to be fixed or represented well or
23 defended well. Mr. Whitten, you look like you have a
24 thought or a motion.
25 MR. WHITTEN: No. I just have a -- I

<p style="text-align: right;">Page 137</p> <p>1 think generally, I mean, that's a contractual law issue. 2 I don't. I don't think that's for us to really even 3 discuss, much less consider at this point. 4 MR. GALBREATH: Policy (indiscernible). 5 All right. Any other comments, questions? 6 DR. BIBLE: Excuse me. Just one moment. 7 I assume when the 1.25 acre rain field or whatever the 8 size was set up, there was a calculation TDEC went 9 through of soil permeability and how much water are 10 you're putting on there in a day and how much land you 11 need to adequately filter that volume of water if the 12 infiltration capacity -- the soil obviously is not 13 sufficient for the amount of water that's being put on. 14 That's speculation on my part. 15 But is there anything in the permit 16 system that obviously, to me looking at it as a 17 geologist, can require Aqua Clear (sic) to either put 18 less water in it or get a bigger drain here? 19 MS. ANGLIN: There are enforcement 20 processes that come into play in certain systems. I do 21 want to kind of make sure there's an understanding that 22 the permittee submits their design plans. And while the 23 department will review and check off on those, their 24 review is very limited. And it doesn't mean that the 25 system's going to work. Right.</p>	<p style="text-align: right;">Page 139</p> <p>1 DR. SCHWARTZ: Generally, because I mean, 2 the land is less expensive, basically. Yeah. But I 3 mean, they have to meet -- as Dr. Bible spoke -- as Dr. 4 Bible said, there has to be tests done to make sure the 5 capacity is there. So I mean, perhaps maybe the 6 engineer that designed this originally didn't do 7 adequate testing or whatever. And I mean, at that 8 point, then really it's up to the permittee to hire 9 somebody to fix the problem, basically. 10 I was in EPA enforcement years ago. And 11 basically it's not up to the regulatory agency to 12 determine what is right. They have to hire -- the 13 permittee has to hire somebody to come up with a 14 solution because they're not responsible legally, from 15 an engineering standpoint, if a system is going to work 16 or not. 17 MS. ANGLIN: Yes. And when properly 18 designed, installed, operated, these systems can have 19 good success. And sometimes there's been adjustments 20 made, the frequency of dosing or other tweaks that can 21 be made that can resolve this type of situation. But 22 until the permittee looks and evaluates that and -- the 23 department's not in a position at this point to say 24 what's going on at that system. 25 MR. GALBREATH: We use phrases like</p>
<p style="text-align: right;">Page 138</p> <p>1 DR. BIBLE: Yeah. I understand. 2 MS. ANGLIN: The department can't certify 3 that it's going to work. It's up to the permittee to 4 ensure the system works properly. And if there's 5 Continued noncompliance, there's a process the 6 department goes through to determine whether to perform 7 enforcement and require additional -- assess penalties, 8 enforce corrective action that -- 9 DR. BIBLE: Thank you. 10 MS. ANGLIN: And it's in the process and 11 has done that at many other sites but this one hasn't 12 risen to that level at this point. 13 MR. GALBREATH: And I realize you're not 14 a technical person but I did a little bit of reading on 15 that. It seems like these systems are used particularly 16 when soils are poor as well, and they're designed to 17 kind of mitigate for sites that are less than optimal. 18 MS. ANGLIN: I can't speak to that. It 19 does exceed my technical capacity on this. 20 MR. GALBREATH: Does that help with your 21 question Mr. Bible? 22 DR. BIBLE: Yes. 23 MR. GALBREATH: Do you know about these 24 kind of systems as well? Are these kind of systems 25 normally designed for poor soil sites specifically?</p>	<p style="text-align: right;">Page 140</p> <p>1 conditions of pollution, but really what we're talking 2 about is trying to avoid untreated wastewater with 3 bacteria and pathogens from sitting on top of the 4 surface of the ground that can come in contact with 5 people and washing the streams untreated -- 6 MS. ANGLIN: Precisely. 7 DR. SCHWARTZ: The reason why I asked a 8 question about the truck stop, because this is prior me 9 going back to school, when I was a consultant, there was 10 a truck stop in Oregon that this same situation was 11 happening. And so basically the truck stop paid to put 12 in a wastewater treatment plant because they weren't 13 able to -- the drain fields were no longer adequate. So 14 anyway, there's alternatives or there's solutions. Of 15 course everything costs money, unfortunately. But 16 anyway, that's why I asked that question. So thank you. 17 MR. GALBREATH: That was Dr. Swartz. All 18 right. 19 THE COURT: So board members, what do you 20 want to do? 21 MR. GALBREATH: (indiscernible) take just 22 one moment presuming that department is finished with 23 oral arguments. Is that correct? Just making sure 24 you're finished with any arguments -- 25 MS. ANGLIN: Yes.</p>

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1 THE COURT: So what I'm doing briefly --
2 this is in the undisputed material facts but Mr. Kendall
3 (indiscernible) present new evidence. But what I can do
4 is read what was stated in here briefly. Most of this
5 is already stated but I'm just going to read it
6 verbatim. Well, some verbatim. The initial paragraph
7 talks about how (indiscernible) responded individually
8 instead of simply characterizing that that dispute
9 (indiscernible). That is insufficient pursuant to the
10 terms of full service procedure.
11 (indiscernible) the department's facts
12 are accepted with minor nonsubstantive modifications.
13 First subsection (indiscernible) quotes the appeal in
14 which Mr. Kendall said, "I disagree with the changes to
15 my permit. Those changes are not meeting or helpful to
16 the operation of these plants. I wish (indiscernible)
17 matter. Thank you for your assistance in this matter."
18 And in the second, Judge Rieger
19 (indiscernible) surmise that the comments made about the
20 permit and I'll read that and that's it. He said,
21 "Received voice message from permittee indicating the
22 changes in the inspection of frequency, including draft
23 permit would add unnecessary expense to the cost system
24 operation and would not result in better system
25 performance.

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1 Permittee also felt that E. coli to the
2 (indiscernible) even though the E. coli mining is
3 required to (indiscernible) offense may be later
4 misconstrued by field inspectors as moving
5 (indiscernible) is required (indiscernible)." With the
6 rest of the discussion, I just thought that actually at
7 least read what those undisputed facts are as it relates
8 to what was stated by our proceeding.
9 There being no additional questions, Mr.
10 Chair, I turn it over to you for your all's
11 deliberations. Again, I presume there will be a
12 proposed order by which the board can accept, modify,
13 and reject entirely and we'll work through that
14 (indiscernible).
15 MR. GALBREATH: Thank you, Your Honor.
16 The previous question was meant to prime the pump.
17 Sorry gentlemen for jumping ahead on that. What do we
18 all want to do?
19 MS. GOFF: This is Amanda Goff. I'm
20 going to accept the final order of dismissal as
21 presented to us by TDEC's general counsel.
22 MR. GALBREATH: Do we have a motion?
23 MS. ANGLIN: Your Honor, I realized after
24 I submitted that there were a couple of sections from
25 the initial order that I did not include in that. One

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1 was the -- let's see -- summary judgment standard and
2 the applicable statute sections. So the version that's
3 on the screen is what you have plus those sections.
4 THE COURT: And just for the record, none
5 of those relate to the facts, simply your addition of
6 what the standard for some of the judgment was as well
7 as the applicable sections. And so thank you. Go
8 ahead, Mr. Chair.
9 MR. GALBREATH: Ms. Goff, would you like
10 to restate your motion since (indiscernible) have a
11 second. (indiscernible) but not new facts.
12 MS. ANGLIN: I move to accept TDEC's
13 final order of dismissal with no new facts being
14 presented in the document.
15 MR. GALBREATH: And the added sections.
16 MS. GOFF: And the included added
17 sections with the --
18 MR. GALBREATH: Sorry. (indiscernible).
19 So basically the motion is --
20 MS. GOFF: -- with the appropriate cost.
21 MR. GALBREATH: So basically her motion
22 is -- I'm supposed to restate these things but I don't
23 always do it. But I better do it now. The motion is to
24 accept the department's initial order, if written with
25 the realization that the addition of two sections of

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1 content that have been omitted do not represent new
2 facts. But what should be part of the -- Your Honor
3 (indiscernible)
4 MR. SMARCH: The motion is to accept the
5 motion as stated.
6 MR. GALBREATH: The motion is to accept
7 the department's initial order with the addition of the
8 two subsections that they just stated were missing,
9 recognizing that they do not represent new facts.
10 MS. ANGLIN: This is Shelby Ward
11 (indiscernible). I say that, Chairman, respectfully,
12 draft order may be more appropriate instead of initial
13 order.
14 MR. GALBREATH: Sounds (indiscernible).
15 So the motion is to accept the draft order with the
16 addition of the two reference subsections that were
17 omitted, recognizing that these are not new statements
18 of fact. Do you accept that? Does that sound like your
19 emotion?
20 MS. GOFF: Yes.
21 MR. GALBREATH: All right, Ms. Goff. All
22 right. So we have a motion. Do we have a second?
23 DR. SCHWARTZ: I second it.
24 MR. GALBREATH: We have a second from Dr.
25 Swartz. A motion by Ms. Golf. Do we have a discussion

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1 on the motion? All right. Seeing none, Mr. SMARCH,
2 we're ready for roll call.
3 MR. SMARCH: the motion is to accept the
4 draft order with the additional two subsections and
5 recognize that they aren't statements of fact.
6 MR. GALBREATH: They aren't new
7 statements of fact.
8 MR. SMARCH: Not new statements of fact.
9 Dr. Bible.
10 DR. BIBLE: Yes.
11 MR. SMARCH: Elaine Boyd.
12 MS. BOYD: Yes.
13 MR. SMARCH: Chairman.
14 MR. GALBREATH: Yes.
15 MR. SMARCH: Brent Galloway.
16 MR. GALLOWAY: Yes.
17 MR. SMARCH: Amanda Goff.
18 MS. GOFF: Yes.
19 MR. SMARCH: Sam Marshall.
20 MR. MARSHALL: Yes.
21 MR. SMARCH:: Dr. Schwartz.
22 DR. SCHWARTZ: Yes.
23 MR. SMARCH: Neal Whitten.
24 MR. WHITTEN: Yes.
25 MR. SMARCH: Terry Wimberley.

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1 MR. WIMBERLEY: Yes.
2 MR. SMARCH: Motion is adopted.
3 MR. GALBREATH: Your Honor.
4 THE COURT: Thank you. (indiscernible).
5 MS. ANGLIN: Yeah.
6 THE COURT: Thank you all. Thank you,
7 Mr. Kendall, for this time as well. (indiscernible)
8 MR. KENDALL: If this matter's resolved,
9 no problem. Could I make a comment as a citizen --
10 THE COURT: Sure.
11 MR. KENDALL: -- once in this thing?
12 THE COURT: Yes. Yeah. The case is
13 over. Go ahead.
14 MR. KENDALL: It would have been nice if
15 you would have looked through there and seen that it
16 rained a half inch the night before they were there. It
17 would have been nice if you knew that TDEC's soil
18 scientist is the one that picked that soil. There's
19 quite a few other things. I don't know the procedures
20 for getting to where I get information to you. This was
21 my only option.
22 But if you could look at a way for
23 somebody to bring the facts to you, maybe make Some
24 changes, it would help the next guy a lot because
25 there's a lot of things like that I would have loved to

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1 have told you. I'd love for you to have seeing it. I
2 know it would have made a difference. But thank you for
3 your time. I appreciate your service.
4 THE COURT: Thank you.
5 MR. KENDALL: I appreciate Your Honor
6 listening and putting up with me. So, again, thank you.
7 THE COURT: Thank you, Mr. Kendall.
8 Okay. I believe we still have another opinion on costs
9 and Tellico Plains case (indiscernible) opposing
10 counsel?
11 MS. BULLER-YOUNG: Yes, Your Honor. And
12 you've been cc'd on our email correspondence with Mr.
13 Quist, who was agreeable to this board deliberating on
14 the issues of the motions for cost. He just wanted to
15 clarify he doesn't oppose this board deliberating and
16 deciding to deny the town's appeals of Judge Garland's
17 orders. So there's one order denying the town's motion
18 for cost, there's one order granting the department's
19 motion for cost.
20 He doesn't oppose this board making a
21 decision to affirm those things but just wanted to
22 clarify that the town does not agree and just wants to
23 preserve the issue for correction.
24 THE COURT: And to the extent it's
25 applicable in a transcript (indiscernible) detachment

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1 (indiscernible) something as we go forward, we do have
2 it on the records. Maybe we don't need it. I just want
3 to be sure that we have that taken care of. Okay. So
4 if we're okay, I just want to be sure that it's
5 documented somewhere along with this thing.
6 MS. BULLER-YOUNG: Yes, Your Honor. We
7 can attach it to our notice of filing once the final
8 order is entered.
9 THE COURT: So as to that matter now, I
10 believe -- yes, ma'am. I believe we're for the
11 department. (indiscernible) the board to delivering on
12 how you'd like to handle the cost and so (indiscernible)
13 matter. If you would like a refresher regarding costly
14 only to do that or if you know where you're at
15 (indiscernible) deliberations. And essentially just the
16 (indiscernible) that order.
17 MR. GALBREATH: I think we might need a
18 refresher from the counsel.
19 MS. BULLER-YOUNG: Gladly, Mr. Chairman.
20 So after the entry of Judge Garland's initial order,
21 both parties moved for costs. the Town of Tellico
22 Plains moved for costs and attorney's fees and the
23 department just moved for our APD costs, which are
24 billed to us every month. On October 15th, 2025, Judge
25 Garland entered an order denying the town's motion for

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1 costs and attorney's fees. And on October 21st, 2025,
2 Judge Garland entered an order granting the department's
3 motion for costs.
4 And so our proposal or this board should
5 now deliberate whether those two orders were correct.
6 So whether you would like to affirm or deny those two
7 orders. And so we've drafted two proposed conclusions
8 of law with respect to those two orders on costs.
9 MR. GALBREATH: I might be confused in
10 this further. Are you representing the appeal? The
11 language in the appeal that Tellico Plains filed
12 regarding costs or are you representing the department's
13 position?
14 MS. BULLER-YOUNG: I'm just trying to set
15 the stage for what the board is deliberating on. The
16 department's position is that you should affirm both of
17 the orders. And I don't know that I ought to speak for
18 the town.
19 MR. GALBREATH: I'll say (indiscernible)
20 Each party wants the cost. The only difference here is
21 the Town of Tellico Plains has asked for cost and
22 attorney's fees (indiscernible). I guess procedurally,
23 I was looking at the wording of a motion. Or should the
24 motion be worded to deny Tellico Plains' appeal as the
25 cost or should the motion be worded the way you just

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1 described, affirming both?
2 MS. BULLER-YOUNG: I think our position
3 is that you should affirm both Judge Garland's decision
4 to deny the town their costs and attorney's fees and his
5 decision to grant the department our costs.
6 MR. GALBREATH: Everybody understand
7 that? Mr. Whitten.
8 MR. WHITTEN: I've got a question for Ms.
9 Ward. Maybe this is better for you. So these were two
10 other orders that we're now asked to consider related to
11 the same case. Right? So typically, we have an
12 opportunity in those. When we have an order before us,
13 we can do nothing and let them stand. We can choose to
14 affirm them or we can deny them. Right? Would that be
15 an appropriate move in this case? Those are the same
16 options that we have when we have other orders.
17 MS. WARD: Yeah. So thank you for that,
18 board member. So the way that this process works -- and
19 this would be the notice of appeal. And of course, Your
20 Honor, speak to this if I say anything incorrect. So
21 when we have an initial order in a case, a party may
22 appeal that initial order and then earlier orders. And
23 so in this case, we had an appeal.
24 And it's my understanding that in the
25 briefings, the parties included the costs with respect

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1 to that too. And there were separate orders, as you
2 mentioned, and they were in the technical record on
3 pages 1613, the order denying the town's motions for
4 costs, and in 1626, order granting the department's
5 motions for cost.
6 So the parties have a right to appeal
7 other orders that are rendered by an ALJ within the time
8 frames allotted. And so that is considered within the
9 context of an appeal in the context like this. So it's
10 not separate. But also, that being said, you can choose
11 to affirm, to deny, or to modify. So those are the
12 choices that you have here as you're contemplating what
13 (indiscernible). Did I answer your question?
14 MR. WHITTEN: I think so.
15 THE COURT: To make this simple, you can
16 deal with the wrong (indiscernible). All you got to do
17 is say, as it relates to this or that, here's what we'll
18 do. So I just --
19 MS. BOYD: And so what are we looking at
20 right here?
21 MS. BULLER-YOUNG: And I can ask Ms. Vann
22 to scroll down to the proposed conclusions of law. So
23 you're looking at the draft proposed order that this
24 board voted to adopt with certain modifications earlier
25 today. And all we've done is we've added two proposed

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1 conclusions of law and in addition, a recitation of just
2 the procedural history with respect to the motion for
3 cost. So that's the first paragraph.
4 We've added a sentence or two saying,
5 "Following the entry of the initial order, the parties
6 seek trial motions for costs." Beginning there, there's
7 some additional narrative about the procedural history.
8 MR. GALBREATH: So as you scroll, Ms.
9 Vann, are you going back to another section that you all
10 amended in regard to this issue?
11 MS. VANN: So we amended two sections.
12 The section that you just saw, which is added the
13 procedural history. And then this is the board's
14 decision, the conclusions. So if you see, the first
15 three paragraphs are the ones that you've already ruled
16 on. And then paragraphs 4 and 5 are the added language.
17 Then the second sentence in the reason for decision is
18 also something that's been added.
19 MR. GALBREATH: Board, do you want them
20 to read those sections to you or do you understand it
21 conceptually enough that you're okay? Okay. So, Your
22 Honor, it sounds like maybe a proper motion would be to
23 accept the draft order as amended.
24 THE COURT: First, I think you can vote
25 on reopening the case (indiscernible) to the order

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1 itself.

2 MR. GALBREATH: So it's similar to --

3 okay. I get you.

4 THE COURT: Yeah. Vote to reopen. Now,

5 you're back on it and then you can vote to amend as

6 such.

7 MR. GALBREATH: Thank you, sir. So we

8 need a motion to reopen the discussion on our previous

9 board action.

10 MS. BOYD: Mr. Chairman, this is Elaine

11 Boyd. I move that we reopen the draft order that we

12 composed for the Town of Tellico Plains' case.

13 MR. GALBREATH: Well stated. Do we have

14 a second.

15 SPEAKER 5: Second.

16 MR. GALBREATH: (indiscernible) Do you

17 understand that Mr. Smarch? I got an affirmative reply

18 there, sir. Verbal.

19 MR. SMARCH: Out loud. My apologies.

20 Yes. I understand the motion.

21 MR. GALBREATH: Thanks, sir. All right.

22 So we have a motion and a second. Is there any

23 discussion (indiscernible) to be open (indiscernible).

24 All right. Seeing none, roll call.

25 MR. SMARCH: The motion is to reopen the

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1 draft order concerning Tellico Plains for discussion.

2 Dr. Bible.

3 DR. BIBLE: So moved.

4 MR. SMARCH: Elaine Boyd.

5 MS. BOYD: Yes.

6 MR. SMARCH: Chairman.

7 MR. GALBREATH: Yes.

8 MR. SMARCH: Brent Galloway.

9 MR. GALLOWAY: Yes.

10 MR. SMARCH: Amanda Goff.

11 MS. GOFF: Yes.

12 MR. SMARCH: Sam Marshall.

13 MR. MARSHALL: Yes.

14 MR. SMARCH: John Schwartz.

15 DR. SCHWARTZ: Yes.

16 MR. SMARCH: Neal Whitten.

17 MR. WHITTEN: Yes.

18 MR. SMARCH: Terry Wimberley.

19 MR. WIMBERLEY: Yes.

20 MR. SMARCH: Motion passed.

21 MR. GALBREATH: So we're back on the

22 draft order as amended. Do we have a motion?

23 MS. BOYD: This is Elaine Boyd. I move

24 that we accept the draft order for the Town of Tellico

25 Plains' case as amended.

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1 MR. GALBREATH: Dr. Schwartz, do you

2 understand that?

3 DR. SCHWARTZ: I understand the motion.

4 MR. GALBREATH: Excellent. Do we have a

5 second?

6 MR. WHITTEN: Second.

7 MR. GALBREATH: Neal Whitten seconds the

8 motion? Do we have a discussion? Seeing none, roll

9 call.

10 MR. SMARCH: The motion is to accept the

11 draft order for Tellico Plains as amended. Dr. Bible.

12 DR. BIBLE: Aye.

13 MR. SMARCH: Elaine Boyd.

14 MS. BOYD: Yes.

15 MR. SMARCH: Chairman.

16 MR. GALBREATH: Yes.

17 MR. SMARCH: Brent Galloway.

18 MR. GALLOWAY: Yes.

19 MR. SMARCH: Amanda Goff.

20 MS. GOFF: Yes.

21 MR. SMARCH: Sam Marshall.

22 MR. MARSHALL: Yes.

23 MR. SMARCH: John Schwartz.

24 DR. SCHWARTZ: Yes.

25 MR. SMARCH: Neal Whitten?

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1 MR. WHITTEN: Yes.

2 MR. SMARCH: Terry Wimberley.

3 MR. WIMBERLEY: Yes.

4 MR. SMARCH: Motion is adopted.

5 MR. GALBREATH: Your Honor.

6 THE COURT: Well, thank you all for

7 finishing that one up again. That concludes the case

8 docket. Thank you all for your time. Thank you for

9 your patience, your questions. Meeting adjourned. I

10 don't know if you have other business or not --

11 MR. GALBREATH: We have a lot.

12 THE COURT: You all take care and thank

13 you again. Thank you.

14 MR. GALBREATH: So I think we need to

15 take a brief five-minute recess to allow court reporter

16 to remove the sound equipment. So without objection,

17 five minutes.

18 (The proceedings were adjourned at 2:22

19 p.m.)

20

21

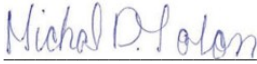
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1 C E R T I F I C A T E
2
3 STATE OF TENNESSEE)
4 COUNTY OF DAVIDSON)
5
6 I, MICHAL TOLON, a Digital Reporter, do hereby
7 certify that the foregoing proceedings were taken down
8 and transcribed under my direction to the best of my
9 ability.
10
11 IN WITNESS THEREOF, I have hereunto set my hand
12 this 17th day of February, 2026.
13
14 
15 _____
16 Michal Tolon
17 Digital Reporter
18
19
20
21
22
23
24
25

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1 C E R T I F I C A T E O F T R A N S C R I P T I O N I S T
2
3 I, ELODIE ANN, Legal Transcriptionist, do hereby
4 certify:
5 That the foregoing is a complete and true
6 transcription of the original digital audio recording of
7 the testimony and proceedings captured in the above-
8 entitled matter. As the transcriptionist, I have
9 reviewed and transcribed the entirety of the original
10 digital audio recording of the proceeding to ensure a
11 verbatim record to the best of my ability.
12 I further certify that I am neither attorney for
13 nor a relative or employee of any of the parties to the
14 action; further, that I am not a relative or employee of
15 any attorney employed by the parties hereto, nor
16 financially or otherwise interested in the outcome of
17 this matter.
18
19 IN WITNESS THEREOF, I have hereunto set my hand
20 this 1st day of March, 2026.
21
22 
23 _____
24 Elodie Ann
25

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