

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 29, 2010

Hon. Michael J. O'Malley
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

RE: SOAH Docket No. 582-08-4290, TCEQ Docket No. 2008-0473-MWD, Application
by South Central Water Company for new TPDES permit no. WQ0014804001

Dear Judge O'Malley:

Enclosed please find the Executive Director's Exceptions to the ALJs Proposal
for Decision and Findings of Fact in the above noted permitting matter.

If you have any questions, please contact me at 512-239-5600.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Brush".

Robert Brush
TCEQ Staff Attorney

Enclosures

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SOAH DOCKET NO. 582-08-4290
TCEQ DOCKET NO. 2008-0473-MWD

In the Matter of the	§	Before the
Application of South Central Water	§	STATE OFFICE of
Company for Proposed TPDES Permit	§	ADMINISTRATIVE HEARINGS
No. WQ0014804001	§	

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO
THE ALJ'S PROPOSAL FOR DECISION AND FINDINGS OF FACT**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files these exceptions to the Proposal For Decision (PFD) and Findings of Fact in this case.

On page 4 of the PFD and in Finding of Fact #15, the PFD references Title 30 of the Texas Administrative Code (30 TAC), Chapter 317. 30 TAC Chapter 317 was repealed and replaced by 30 TAC Chapter 217 in 2008. Therefore, the wastewater treatment plant must be designed and constructed to the new standards in 30 TAC, Chapter 217 – Design Criteria for Domestic Wastewater Systems. However, the ED notes that Mr. Ince did cite Chapter 317, rather than the new Chapter 217, in his testimony.¹

On page 8 of the PFD, it states that the proposed wastewater discharge “will be *the* source of fresh water [italics added]” for the Robinson’s wetland. The ED recommends changing that statement to “*a* source of fresh water” since the wetlands currently receive inflows of fresh water and the proposed discharge would not be the sole source of fresh water for the wetland.

The wording of Finding of Fact #17 suggests that both natural and manmade fresh water flows are needed for a healthy wetland. The ED recommends changing the phrase in parentheses from “both natural and manmade” to “natural or manmade” since only one or the other; or a combination of the two are necessary for a healthy wetland.

¹ South Central Ex. 3, Ince Prefiled Direct Testimony at 3-4.

Finding of Fact #35 currently states: "TCEQ sets the water quality standards for Texas waterways." The ED suggests a more appropriate term than "waterways" is "water in the state." Water in the state is more legally precise. It is defined in Texas Water Code § 26.001(5) and is the phrase used in the Texas Surface Water Quality Standards rules in 30 TAC, Chapter 307, regarding what waters the water quality standards are implemented to protect. *See* 30 TAC § 307.1.

The ED appreciates consideration of the exceptions noted and does not have any other exceptions with the PFD and Findings of Fact in this case.

Respectfully Submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G., Executive Director

Robert Martinez, Director
Environmental Law Division



Robert D. Brush, Staff Attorney
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CERTIFICATE OF SERVICE

I certify that on March 29, 2010, the "Executive Director's Exceptions to the ALJs Proposal for Decision and Findings of Fact" in this matter was served to all parties in this case via hand delivery, facsimile transmission, inter-agency mail, or by U.S. Mail.



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