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February 25, 2013

Via TCEQ's e-Filing System

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

Re: SOAH Docket No. 582-12-3294; TCEQ Docket No. 2011-0667-MWD-E;
*Executive Director of the Texas Commission on Environmental Quality v. West
Houston Airport Corporation*

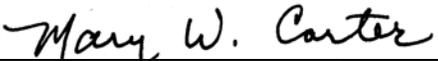
Dear Ms. Bohac:

Enclosed please find *West Houston Airport Corporation's Reply to the Office of Public Interest Counsel and The Executive Director's Responses to The Administrative Law Judge's Proposal for Decision and Order* in connection with the above referenced matter.

Should you have any questions in connection with the enclosed document, please call our office.

Sincerely,

BLACKBURN CARTER, P.C.

by 
Mary W. Carter

Enclosure

c: Jennifer Cook *Via E-Mail*
Rudy Calderon *Via E-Mail*
Blas J. Coy, Jr. *Via E-Mail*
Judge Richard R. Wilfong - *Via SOAH Electronic Filing System*

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE STATE OFFICE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY	§	
	§	
v.	§	OF
	§	
WEST HOUSTON AIRPORT	§	
CORPORATION	§	ADMINISTRATIVE HEARINGS

WEST HOUSTON AIRPORT CORPORATION'S
REPLY TO THE OFFICE OF PUBLIC INTEREST COUNSEL AND THE EXECUTIVE
DIRECTOR'S RESPONSES TO THE ADMINISTRATIVE LAW JUDGE'S PROPOSAL
FOR DECISION AND ORDER

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE RICHARD R. WILFONG:

COMES NOW, West Houston Airport Corporation, ("Respondent" or "WHA"), and files this its Reply to the Office of Public Interest Counsel's ("OPIC") Statement and the Executive Director's ("ED") Brief and Exceptions filed in Response to the Administrative Law Judge Richard R. Wilfong ("ALJ")'s Proposal For Decision and Order.

RESPONSE TO OFFICE OF PUBLIC INTEREST COUNSEL

Respondent agrees with the statement by the OPIC: "the Office of Public Interest Counsel of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") agrees with the Court's conclusions and recommendation in the Proposal for Decision and Order issued on January 24, 2013."

RESPONSE TO THE EXECUTIVE DIRECTOR'S BRIEF AND EXCEPTIONS

I. SUMMARY

Respondent disagrees with the position taken by the ED requesting a penalty of \$125,750.00 be assessed against Respondent. ED Brief and Exceptions at 3. The ED argues that the reduction recommended by the ALJ and OPIC of \$101,250.00 (and agreed to and accepted

by Respondent) which is the equivalent of the entire compliance history enhancement in this case should not be accepted at all. The ED is adamant that its recommended penalty of \$125,750.00, including the entire compliance history enhancement, 225% of the ED's calculated base penalty (or \$101,250.00) should be assessed against the Respondent. Under the ED's scenario, the history and extent of previous violations take priority over all the other factors to be considered under Tex. Water Code § 7.053. Specifically, the impact of the violation on a receiving stream, water quality, aquatic and wildlife habitat, the degree of culpability, demonstrated good faith, economic benefit, amounts necessary to deter future violations and importantly, "any other matters that justice may require," have been cast aside in favor of compliance history enhancement.

The ED states that it had alleged 7 water quality violations, and that some of the violations date back to 2004. PFD at 5. It should be noted that while there were violations at the Respondent's facility dating back as far as 2004, this Respondent entered into an Agreed Order in 2009 and paid an administrative penalty associated with those violations, PFD at 3, while at the same time having already started working diligently to fully address any and all future violations by connecting to a regional system at great cost to Respondent. It is misleading for the ED to suggest that Respondent has not taken its responsibilities to comply with TCEQ rules and regulations seriously and with due diligence.

Although the ALJ found that the ED proved the alleged 7 violations, the Respondent did not contest at the hearing that these 7 violations occurred. The Respondent did, however, contest the excessive penalty of \$125,750.00 that the ED was recommending, as did OPIC. PFD at 18-19. After hearing all of the evidence presented at the hearing, the ALJ also found that such a penalty was excessive. PFD at 1, 19. Both OPIC and the ALJ believed that given the unique

circumstances in this case, an appropriate and reasonable penalty to be assessed against Respondent was \$24,500.00, which the ALJ has recommended in his PFD to the Commission. PFD at 1. The ALJ arrived at this recommended penalty as discussed in his PFD, but the important element is that given the facts of this case, the ALJ found that with all factors under consideration, including the fact that no hazard was posed to the public health, no impact to the environment was found, and “other matters as justice may require”, the ALJ determined that the ED’s recommended penalty of \$125,750.00 was excessive and unreasonable, and that a reduced penalty of \$24,500.00 was appropriate. PFD at 19.

The ED additionally makes the preposterous statement that they supported the concept of regionalization in this case. ED Brief and Exceptions at 3. The only example of support identified was approving “three requests for extension of corrective action deadlines (approximately 15 months) to allow the Respondent more time to either connect to a regional system or otherwise remedy the violations.” Clearly the ED has no idea how long it takes to connect to the City of Houston’s Wastewater Treatment Plant, as 15 months hardly compares to the six years it actually took, at a cost of about \$400,000.00. Respondent Initial Brief at 29. The ED refused to give any credit to the Respondent in its calculation of its recommended penalty for such efforts by the Respondent. Respondent Initial Brief at 27. Justice in this case requires otherwise.

II. RECOMMENDATION OF PENALTY CONSISTENT WITH TCEQ 2002 PENALTY POLICY

A. ED Recommends Penalty Consistent with Penalty Policy, Including Compliance History Enhancement

WHA disagrees that the ED followed the Penalty Policy in its calculation of its recommended penalty in this case. The ED ignored the Penalty Policy in its evaluation of the

degree of harm to the environment that the effluent violations caused. These violations accounted for the vast majority of the ED's recommended Base Penalty of \$45,000.00, prior to any adjustments, such as for Compliance History. As was found by the ALJ after listening to and considering all of the evidence presented at the hearing, there was no evidence that there was any impact to the environment from any of these 7 violations. Yet, the ED calculated that most of the effluent violations resulted in "Moderate" harm to the environment, contrary to the evidence presented at the hearing. The ED had used a "simplified model" to arrive at its calculation of harm from these effluent violations. This "model" is not provided in the TCEQ's Penalty Policy. Had the ED applied the model correctly, even this "simplified model" would have shown that the degree of harm caused by these effluent violations would have been "minor", as was shown by the evidence at the hearing. Also, had the ED applied the Penalty Policy correctly, including its definitions of "significant" versus "insignificant" harm to the environment, it would have found that there was no significant harm caused to the environment, consistent with the evidence presented at the hearing. The ED ignored the Penalty Policy guidelines that spelled out procedures and definitions for evaluating the degree of harm that Respondent's effluent violations were causing to the environment. The evidence presented at the hearing made it clear that there was no evidence of any significant harm to the environment, and the ALJ arrived at the same conclusion after listening to and evaluating the evidence presented at the hearing. PFD at 20.

It should be further noted that the 2002 Penalty Policy is a policy, not a rule. *Slay v. TCEQ*, 351 S.W. 3d 531, 548 (Tex. App.-Austin 2011, pet. denied). The TCEQ has the statutory authority to issue an administrative order regarding violations of its rules or state laws regarding

water quality, and may or may not include in such order the assessment of administrative penalties, as follows:

The Commission may assess an administrative penalty against a person as provided by this subchapter if:

- (1) the person violates:
 - (A) a provision of this code or of the Health and Safety Code that is within the commission's jurisdiction;
 - (B) a rule adopted or order issued by the commission under a statute within the commission's jurisdiction; or
 - (C) a permit issued by the commission under a statute within the commission's jurisdiction ...

Tex. Water Code § 7.051(a).

If a person violates any statute or rule within the commission's jurisdiction, the commission may:

- (1) assess against the person an administrative penalty under this subchapter; and
- (2) order the person to take corrective action.

Tex. Water Code § 7.073.

Remedies available to the commission in enforcement actions include all those found in the Texas Water Code, the Health and Safety Code, and the APA. These include but are not limited to issuance of administrative orders with or without penalties; ...

30 T.A.C. § 70.5.

If the TCEQ decides to assess administrative penalties, Section 7.053 of the Texas Water Code presents certain factors that must be considered by the TCEQ in assessing such penalties, as follows:

In determining the amount of an administrative penalty, the commission shall consider:

- (1) the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment to existing water rights or the hazard or potential hazard created to the health or safety of the public;

- (2) the impact of the violation on
 - (A) air quality in the region;
 - (B) a receiving stream or underground water reservoir;
 - (C) instream uses, water quality, aquatic and wildlife habitat, or beneficial fresh water inflows to bays and estuaries; or
 - (D) affected persons;
- (3) with respect to the alleged violator:
 - (A) the history and extent of previous violations;
 - (B) the degree of culpability, including whether the violation was attributable to a mechanical or electrical failure and whether the violation could have been reasonably anticipated and avoided;
 - (C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;
 - (D) economic benefit gained through the violations; and
 - (E) the amount necessary to deter future violations; and
- (4) any other matters that justice may require.

Tex. Water Code § 7.053.

III. ED DISAGREES THAT \$101,250.00 REDUCTION IS APPROPRIATE IN THIS CASE

A. ED Disagrees with Negating Compliance History Enhancement

ED contends that it is inconsistent with the Penalty Policy and prior Commission practice to completely negate the impact of Compliance History. ED Brief and Exceptions at 5. The Penalty Policy and Tex. Water Code § 7.053 provides that the Respondent’s Compliance History be “considered” in assessing administrative penalties. Such was done by the ED and the ALJ. The Penalty Policy and Tex. Water Code § 7.053 also provide that “other matters as justice may

require” be considered. Clearly in this case Respondent took extraordinary steps, at substantial cost, to pursue regionalization, yet the ED chose specifically not to take this into consideration in its calculation of a recommended penalty. The ALJ disagreed with the ED on this point, as did OPIC. PFD at 19. By considering this fact, both the ALJ and OPIC concluded that an appropriate adjustment was warranted to the penalty calculated by the ED such that the final penalty amount of \$24,500.00 was appropriate and reasonable under these unique circumstances.

B. Size of WWTP and Impact to Environment Already Considered in ED’s Recommended Penalty

The ED claims that the size of WHA’s WWTP was not unique, and that size of a facility is already taken into consideration in the Penalty Policy. The TCEQ Penalty Policy does make a distinction in the assessment of administrative penalties between “major” facilities (i.e. over 1 million gallons per day) and “minor” facilities (i.e. less than 1 million gallons per day). Yet, this Respondent’s facility discharges only 0.002 million gallons per day, equivalent to serving about 5 households. Finding of Fact 3. The size of this facility, and the impact to the environment, are important factors in the assessment of any administrative penalty.

The ED believes that the penalty tables in the Penalty Policy for a “minor” facility adequately address the size of this facility in determining an appropriate penalty. But WHA believes that since this facility is so small compared to the “minor” facility cutoff of 1 million gallons per day, and also is so small compared to even the other small facilities regulated by the TCEQ in the Houston area, this uniquely small size of this facility should be taken into consideration when determining any appropriate penalty. The ED disputes that this facility is one of the smallest facilities that the TCEQ Houston Region regulates; yet the ED and its witnesses at the hearing could not think of another WWTP in the Houston area smaller than this

one, or even as small as this one, even though they testified that there were numerous small plants in the Houston area. Tr at 143-145.

The ED also claims that the impact to the environment is also already taken into consideration in the Penalty Policy. The TCEQ Penalty Policy does address the degree of harm to the environment in its guidance to the ED staff in calculating an appropriate penalty. Following such guidance, the degree of harm to the environment caused by WHA's most severe effluent violations were found to have little or no impact whatsoever. As such, the Policy guidance indicates that this would result in a classification of "minor" harm, defined as involving an insignificant amount of pollutants that do not exceed levels protective of human health and the environment, with correspondingly small penalties.

However, as noted above (p.4) the ED staff failed to follow this guidance, and instead utilized a "simple model", not addressed in the Policy, that provides a general estimate of possible harm to the environment based on permitted effluent limits.

The ED also tries to argue that its recommended penalty in this case was calculated consistently with other similarly situated WWTPs. The ED argues that the facility is not unique and that there are many small WWTPs in the Houston area similar to the Respondent. There is no evidence in the record that there is any facility as small as the Respondent's facility nor any evidence that there is anything more than a minimal impact on the environment from the facility. PFD at 20. Although the immediate receiving stream is a Harris County Flood Control District ("HCFCD") ditch, the only evidence in the record as far as affected resources are concerned is Buffalo Bayou, where Mr. Jim Davenport stated that there would be little or no impact from any discharge from Respondent's WWTP. Respondent Initial Brief at 7, 18. Indeed Mr. Ibarra, a witness for TCEQ, admitted that he had never even been to the site, nor was he aware of what

sort of affected resources there could possibly be, even though he was the one calculating the penalty and assessing the degree of harm associated with the violations. Respondent Initial Brief at 18.

The ED states that there is no evidence in the record that the Respondent took any action other than efforts to connect to the City to remedy the continuing environmental violations in this case. That simply isn't true. Most of the violations were corrected either by submitting the appropriate documents or by fixing a part that had broken (sludge violations), or demonstrating periods with no effluent violations. This is what makes the ED's recommended penalty so outrageously excessive and inconsistent with the guidelines provided in the TCEQ Penalty Policy.

The ED asserts that they have reduced the penalty by \$20,150.00 to offset the compliance history enhancement. However this \$20,150.00 represents offsets associated with paper penalties self-reported by the Respondent. Not one penny is included for the extraordinary efforts taken to connect to the City of Houston.

C. ED's Recommended Penalty is Not Uniquely Large

The ED states that the Commission has assessed both larger penalties and comparable penalties to the one recommended by the ED in this case, citing to 7 TCEQ Orders issued between 2008 and 2012. ED Brief and Exceptions FN 30 p. 9. None of this information was presented during the hearing in this case, even though the ED had the opportunity to do so, knowing that the excessiveness of the ED's recommended penalty in this case was the primary issue, having been raised by both the Respondent and OPIC from the very beginning.

No ED witness testified to this information, no copies of Agreed Orders or Enforcement cases were included by the ED as exhibits. Indeed, Mr. Byer of the TCEQ Enforcement

Division, testified that the WHA proposed penalty was the largest administrative penalty for a domestic WWTP that he was aware of even larger than the largest penalty he was aware of for an industrial site. Respondent Initial Brief at 3. This information was not presented as rebuttal testimony, and of course no opportunity to cross-examine a witness or question any exhibits exists. Furthermore, although the penalties listed are large, the closest facility to Respondent in size in these cases is more than 10 times the size of Respondent. Under this scenario, Respondent should be assessed a penalty one-tenth the size of Meadowland Utilities or \$13,230.20. Furthermore, all of these cited TCEQ orders are Agreed Orders, except for one Default Order, and involve some degree of harm to the environment resulting from the alleged violations unlike WHA.

D. ED Supports Regionalization But Not Violations During Process to Regionalize

The ED suggests that it doesn't support WWTPs remaining in violation while they attempt to connect to a regional facility, and the ED granted 3 extensions of time for WHA to come into compliance with TCEQ rules and regulations, including its Agreed Order. ED Brief and Exceptions at 9. The ED knew that WHA was trying to connect to a regional system, and in fact was somewhat supportive of WHA's efforts, as they should be. It was only after the ED misinterpreted a letter by WHA's attorney in January, 2011 that the ED decided that WHA was "refusing to comply" with its Agreed Order, which of course was not the case. In fact, within a few months after this letter, WHA finally got written approval from the City of Houston to connect to its regional system, which WHA immediately proceeded to do.

The ED claims that its staff had concerns about the continuing effluent violations due to their "direct impact to the environment". ED Brief and Exceptions at 9. This was the exact same argument the ED made in its Closing Argument (see p. 7 from ED Closing Argument). Such

claims are not true as there was no evidence of any direct impacts occurring to the environment, and in fact the cited testimony by the ED actually refers to concerns about the “potential” impact to the environment. Respondent Initial Brief at 18.

The ED also claims that it is not aware of any regulation that allows a regulated entity to violate the TCEQ rules and regulations while pursuing regionalization. ED Brief and Exceptions at 10. It should be noted that Tex. Water Code § 7.0026 authorizes the TCEQ to enter into a compliance agreement with a regional service under which the commission will not initiate an enforcement action against the regional service for existing or anticipated violations resulting from the operation by the regional service of the service being integrated. This statute applies to a service operated by or for a municipality or county being integrated into the regional service. Thus, violations by a regulated entity can be allowable during the process of regionalization, which is consistent with the State’s policy of encouraging such regionalization, as was done by WHA. Tex. Water Code § 26.003.

The ED appears to assume that the only credit to be given for regionalization is in accordance with the Penalty Policy, which states as an example – if a respondent purchased a noncompliant waste water facility as part of the regionalization of service. It is clear that Tex. Water Code § 7.053(4) states “any other matters that justice may require” must be considered, not just those that might be given as an example. We agree that the Penalty Policy does not state that a noncompliant wastewater facility should get a downward adjustment. However, that is not what the Respondent is asking: the Respondent is asking that as a matter “as justice may require”, in this case: 5 years, considerable expense, the permanent end of violations and an efficient and effective treatment of wastewater, be considered in determining the appropriate Final Penalty Amount.

The ED notes that there have been other cases where respondents have “gotten out of the regulated business” to address violations and complains that this Respondent has shown no prior case, and that the ED’s counsel is not aware of one, in which an “other factors reduction” had been given in those instances. ED Brief and Exceptions at 10. ED presented no evidence to this effect and ED’s counsel does not identify any other facilities that have gotten out of the regulated business and connected to a regional facility and spent six years in the effort.

E. Additional Considerations Weigh Against ALJ’s Recommended Penalty

The ED claims that it recommends that all factors be considered as implemented in the Penalty Policy, and claims that WHA is suggesting that the only factors the Commission should consider are size of the facility and connecting to a regional system. Of course, WHA has never suggested that these are the only two factors that the Commission should consider. Texas Water Code § 7.053 sets out the factors that the Commission is required to consider. WHA wants the Commission to consider all of the statutory factors in determining the appropriate penalty in this case, which the ALJ has done, and the ED did not do in arriving at their respective recommended penalties.

The ED states that the Respondent did eventually come into compliance with some of the violations in this case, but that it took extended periods of time and much efforts spent by the TCEQ staff. This is not quite true. The Respondent came into compliance with or otherwise resolved and eliminated all violations, and we are not aware of any efforts spent by the TCEQ in helping Respondent come into compliance. Respondent is not disputing that it had financial resources to remedy the violations in the case. Those resources however, were being put towards regionalization as the best solution to the problem. However, the ED seems to think that \$400,000.00 is a trivial amount of money, and that the Respondent should have not only spent

\$400,000.00 towards regionalization, but whatever else was needed to fix a wastewater treatment plant that would go out of business within months of being fixed. That did not make “economic sense.” Penalties should be based on the factors in Tex. Water Code § 7.053, not necessarily the financial capability of the Respondent.

IV. IF ALJ AND COMMISSION DETERMINE A REDUCTION IN THE ED’S RECOMMENDED PENALTY IS APPROPRIATE, ED SUGGESTS CAPPING COMPLIANCE HISTORY ENHANCEMENT AT 100%

The ED suggests that it is not adverse to a reduction in its recommended penalty amount by capping the Compliance History enhancement at 100%, consistent with the 2011 Penalty Policy and Legislative intent. ED Brief and Exceptions at 12. While the Penalty Policy and the Legislative intent both reveal that such history be considered in assessing administrative penalties, such should not be used to create an excessive and unfair penalty, and the ED’s recommended alternative penalty of \$89,650.00 is still unfair, unreasonable and excessive. Again, Compliance History is one factor to be considered, not necessarily control, in determining the penalty to be assessed.

V. PENALTY SHOULD BE \$44,650.00 AND NOT \$24,500.00 TO OFFSET COMPLIANCE HISTORY ENHANCEMENT

The ED argues with how the ALJ arrived at his recommended penalty amount of \$24,500.00, contending that the ALJ should not totally offset the Compliance History enhancement, and if that is all that is done, the penalty would be \$44,650.00 (the Total Base Penalty calculated by the ED). ED Brief and Exceptions at 13.

The ED is missing the point of the ALJ’s Proposal for Decision and his corresponding Recommended Penalty of \$24,500.00. The ALJ found that, based on all the evidence presented at the hearing, and taking into consideration the unique facts of this case and the statutory factors that must be considered by the Commission, the ED’s recommended penalty of \$125,750.00 was

excessive and unreasonable, and that a penalty of \$24,500.00 was appropriate and reasonable under the circumstances. How the ALJ arrived at this number is not necessarily important, since an adjustment for “other factors as justice may require” does not have a formula or calculation provided in the Penalty Policy or anywhere else to be used as a guide. This type of adjustment cannot have a set formula, as it relies on the unique circumstances of any particular case to determine if, and how much, of an adjustment would be appropriate. OPIC, with its extensive experience in participating in and monitoring these types of enforcement cases, felt strongly that the ED’s recommended penalty of \$125,750.00 was excessive, and stated so throughout the hearing. The ALJ, after listening and considering all of the evidence presented at the hearing, came to the same conclusion. Both felt that justice required that a substantial reduction in the ED’s recommended penalty was appropriate, and arrived at a penalty of \$24,500.00.

VI. SPECIFIC EXCEPTIONS TO PROPOSED ORDER

Respondent specifically disagrees with the Exceptions submitted by the ED.

A. Finding of Fact No. 3

The ED wants to eliminate this finding about the small size of the WHA facility. This issue about the small size of the WHA facility, and that it was the smallest facility known to the Houston investigator Ms. Hopkins, was raised during her deposition, taken well before the hearing in this case. (Tr at 143-145). Thus, contrary to the ED’s claim, there was plenty of time for the ED staff, and this witness in particular, to do whatever research of the TCEQ records that was needed to verify this information prior to the hearing. The size of this facility is an important consideration in determining an appropriate penalty in this case.

There is in fact evidence in the record that this plant is one of the smallest if not the smallest wastewater treatment plant in the state. PFD at 20.

B. Finding of Fact Nos. 10 and 11

The ED wants to totally eliminate these two findings that there was no evidence of any harm to the environment that resulted from WHA's violations. The evidence presented by the ED's own witnesses, Mr. Jim Davenport, and Mr. Jorge Ibarra, established this lack of evidence of any harm to the environment. PFD at 20

C. Finding of Fact No. 22

The ED wants to totally eliminate this finding of fact, or add additional sentences in an attempt to suggest that the ED was following the state's policy regarding WHA's efforts towards regionalization. The proposed finding is appropriate as is, and the additional sentences proposed by the ED distorts how the ED dealt with WHA during its extraordinary and extensive efforts to connect to the City's regional system.

D. Finding of Fact No. 26

The ED wants to totally eliminate this finding of fact or add that the ED's recommended penalty was calculated in accordance with the Penalty Policy. As discussed above, the ED did not follow the Penalty Policy in arriving at its excessive penalty. Thus, this Finding of Fact should not be changed or eliminated.

E. Conclusion of Law No. 10

The ED wants this conclusion of law to be changed to reflect the ED's penalty of \$125,750.00 instead of the ALJ's recommended penalty of \$24,500.00. As discussed above, the ALJ's recommended penalty is reasonable and appropriate under the unique circumstances of this case, and is consistent with the TCEQ Penalty Policy.

F. Ordering Provision No. 1

The ED wants to add an additional sentence to this ordering provision that, according to the ED, is a standard provision in Agreed Orders and Default Orders. This Proposed Order is neither.

The ED has left the administrative penalty in the amount of \$24,500.00 for violation of the above noted statute and rules. We agree with that. However we disagree that the Commission “shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.” There are no more violations that will be raised since the wastewater treatment plant was permanently closed at the beginning of 2012, and the ED’s suggested addition should be denied.

VII. Conclusion

Respondent respectfully requests that the Texas Commission on Environmental Quality accept and affirm the ALJ’s Proposal for Decision, Findings of Fact, Conclusions of Law, and the recommendation that Respondent be assessed an administrative penalty in the amount of \$24,500.00.

Respectfully submitted,

BLACKBURN CARTER, P.C.

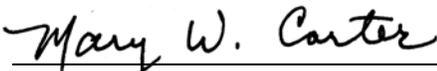
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Counsel for Respondent

CERTIFICATE OF SERVICE

On this 25th day of February, 2013, a true and correct copy of the foregoing instrument was served on all attorneys of record by the undersigned via the method designated below.



Mary W. Carter

Via SOAH Electronic Filing System
Honorable Judge Richard R. Wilfong
Administrative Law Judge
State Office of Administrative Hearings
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Austin, Texas 78701-1649

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