

SOAH DOCKET NO. 582-12-5353
TCEQ DOCKET NO. 2011-1647-PWS-E

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
Petitioner	§	
	§	STATE OFFICE OF
V.	§	
	§	
	§	
SOUTH TEXAS WATER AUTHORITY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**THE EXECUTIVE DIRECTOR’S EXCEPTIONS TO THE
PROPOSAL FOR DECISION AND PROPOSED ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE CRAIG BENNETT (ALJ):

The Executive Director (ED), after reviewing the Administrative Law Judge’s (ALJ’s) Proposal for Decision (PFD) and proposed order (Proposed Order), respectfully files these exceptions for the ALJ’s reconsideration and then the Commissioners’ consideration.

The ED agrees with the ALJ’s determination that the eight alleged violations occurred and that the appropriate penalty is \$2,443. The ED does take exception to the ALJ’s recommendation that the Commission determine that (1) South Texas Water Authority (STWA) is not currently a public water system (PWS), and (2) consequently there should be no corrective actions required. Instead, the ED respectfully requests that the ALJ recommend and the Commission determine that STWA is a PWS and order the corrective actions recommended by the ED.

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I. Summary

In this case, the ED alleges eight drinking water violations against STWA. The evidence demonstrates the eight violations occurred. STWA offered no evidence negating any of the alleged violations. While STWA did not dispute the factual evidence supporting the violations, STWA does claim it is not a PWS as that term is defined, and therefore, it is not subject to TCEQ drinking water regulations.

The main dispute in this case is that STWA claims it is not a public water system and not subject to regulation. STWA does fall within the definition of a PWS. Thousands of individuals use the water provided by STWA for human consumption. As such, STWA's system serves more than twenty-five individuals and falls within the definition of PWS. The definition is not limited to only those entities that directly provide water to the individuals who ultimately use the water for human consumption. If such a limitation were intended, the definition could have included wording of this limitation. The fact that STWA is a PWS is supported by testimony of experts in drinking water regulations. Alicia Diehl and James Weddell from the TCEQ both testified that STWA is a PWS under TCEQ rules. Blake Atkins from the EPA testified that STWA is a PWS.

STWA asks the Commission to reinterpret the definition of PWS such that only retail water providers are subject to regulation. This is inconsistent with longstanding TCEQ and EPA interpretation. It is also not technically sound because it would remove from regulatory oversight important aspects of the technically proven process necessary for the production and distribution of safe drinking water.

Maintaining a disinfectant residual throughout distribution and maintaining a sanitary and secure infrastructure throughout distribution are technically significant requirements to ensure protection of public health. STWA's customers do not perform treatment necessary to produce potable water. STWA's customers testified that they expect the water they receive from STWA to be potable. The treatment STWA's customers provide is maintenance of a disinfectant residual during the last leg of distribution to the ultimate consumers. Maintenance of a disinfectant residual is designed to keep potable water potable. It is not designed to produce potable water. Maintenance of a disinfectant residual during only part of distribution is not permissible under the regulations.

While maintaining the minimum disinfectant residual requirement may be an expensive proposition for STWA, it is necessary to ensure safe drinking water and for compliance with TCEQ regulations.

II. The ED respectfully disagrees with STWA's interpretation of the definition of "public water system" (PWS) such that the word "serve" requires a direct retail connection with individuals consuming drinking water such that only treatment plants and distribution system components that have their own retail customers fall within the regulatory scheme of the Safe Drinking Water Act and TCEQ regulation.¹

The ED respectfully disagrees with the ALJ's recommendation that the Commission adopt STWA's interpretation of the definition of PWS, and therefore find that STWA is not a PWS within the definition. In the ED's exceptions, the ED attempts to clarify the ED's position and address issues raised in the PFD regarding the interpretation of the definition of PWS, for the ALJ's reconsideration and the Commission's consideration.

In the PFD, the ALJ notes that the interpretation of the definition of PWS is an interpretation of the Commission's rule. It is also a complicated issue that implicates the technical process of providing safe drinking water to the public. Understanding the technical consequences of the competing interpretations is a critical component of the analysis. The TCEQ's drinking water rules have embedded within them an informed science-based technical process for producing and distributing safe drinking water to the public. STWA asks the Commission to reinterpret the longstanding meaning of PWS such that part of the process of producing and providing drinking water to the public would fall outside the purview of regulation. This is contrary to the legislative intent of the Texas Health and Safety Code (THSC) and the federal Safe Drinking Water Act (SDWA) and undermines the integrity of the technical process for providing safe drinking water to the public.

When interpreting either a statute or an agency rule, the factors to consider in the analysis are the same.² In construing statutes, the objective is to determine and give effect to the legislature's intent.³ Considerations include the language of the statute, legislative history, the nature and object to be obtained, and the consequences that would follow from alternate constructions.⁴ Additionally, a statute or rule should not be construed to produce an absurd or

¹ The ED's exhibits in this case will be referred to in this document as "ED" [exhibit no.] at [page]: [description if necessary]. The reference to page numbers is a reference to the stamped number in the bottom center of each page, beginning with "00". STWA's exhibits will be referred to as "STWA" in the same manner as the ED's exhibits.

² *Texas Gen. Indem. Co. v. Texas Workers' Comp. Comm'n*, 36 S.W.3d 635, 641 (Tex. App.—Austin 2000, no pet.); see also *Lower Laguna Madre Foundation, Inc. v. Texas Natural Resource Conservation Comm'n*, 4 S.W.3d 419 (Tex. App.—Austin 1999).

³ See *Liberty Mutual Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex.1998); *Union Bankers Ins. Co. v. Shelton*, 889 S.W.2d 278, 280 (Tex.1994).

⁴ See *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001).

unreasonable result.⁵ Instead, it is presumed that a just and reasonable result is intended.⁶ Statutes and rules should be considered as a whole, in an attempt to maintain harmony among all of the provisions.⁷

Administrative agencies have the power to interpret their own rules, and the interpretation is entitled to great weight and deference.⁸ An agency's construction of its rule is controlling if it does not contradict the plain language of the rule and is reasonable.⁹ When the construction of an administrative regulation is in issue, deference is even more clearly in order.¹⁰ This is particularly true when the rule involves complex subject matter.¹¹ It is recognized that the legislature intends an agency created to centralize expertise in a certain regulatory area "be given a large degree of latitude in the methods it uses to accomplish its regulatory function."¹²

STWA asks the Commission to go outside the current regulatory scheme which encompasses an scientifically-based technical process designed to ensure safe drinking water. STWA asks the Commission to determine the definition requires a direct relationship to the ultimate consumers such that STWA, as a wholesale water supplier, is not PWS. If the Commission decides to change the longstanding application of definition of PWS, it would necessarily take a segment of the production and distribution of public drinking water outside regulation and outside the proven technical process embedded within the regulations. The ED asks the Commission and ALJ to maintain the current regulatory scheme and thereby maintain the integrity of the scientifically sound technical process designed to ensure safe drinking water.

⁵ See *Helena Chem. Co.*, 47 S.W.3d at 493. *Railroad Com'n of Texas v. Texas Citizens for a Safe Future and Clean Water*, 336 S.W.3d 619, 54 Tex. Sup. Ct. J. 642, 645 (Tex., Mar 11, 2011); *Southwestern Bell Tel. Co. v. Public Util. Comm'n*, 888 S.W.2d 921, 927 (Tex.App.-Austin 1994, writ denied) (quoting *State v. Mauritz-Wells Co.*, 141 Tex. 634, 175 S.W.2d 238, 242 (1943)).

⁶ *Id.*

⁷ See *Helena Chem. Co.*, 47 S.W.3d at 493.

⁸ *Phillips Petroleum Co. v. Texas Com'n on Environmental Quality*, 121 S.W.3d 502, 507-508 (Tex.App.-Austin Nov 20, 2003)

⁹ *Id.*; *Railroad Com'n of Texas v. Texas Citizens for a Safe Future and Clean Water*, 336 S.W.3d 619, 54 Tex. Sup. Ct. J. 642, 645 (Tex., Mar 11, 2011)

¹⁰ *Phillips Petroleum Co.*, 121 S.W.3d at 507-508; *Udall v. Tallman*, 380 U.S. 1, 17, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965).

¹¹ *Phillips Petroleum Co.*, 121 S.W.3d at 507-508; see also *Equitable Trust Co. v. Finance Comm'n*, 99 S.W.3d 384, 387 (Tex.App.-Austin 2003, no pet.).

¹² *Phillips Petroleum Co.*, 121 S.W.3d at 507-508; *Reliant Energy, Inc. v. Public Util. Comm'n*, 62 S.W.3d 833, 838 (Tex.App.-Austin 2001, no pet.); see also *State v. Public Util. Comm'n*, 883 S.W.2d 190, 197 (Tex.1994).

A. The ED's interpretation, that the definition of PWS does not just encompass retail water providers, is consistent with EPA's interpretation and the longstanding national application of the definition of PWS.

According to longstanding interpretation of the definition of PWS by the EPA and the TCEQ, STWA is a PWS. The definition of PWS is:

Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes; any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.¹³

A PWS must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. A PWS includes "any" collection, treatment, storage and distribution facilities. Treatment plants treat and store drinking water. Wholesale water suppliers treat, store and distribute drinking water. The parties do not dispute that STWA is a wholesale water supplier which treats, stores and distributes water. In determining whether individuals are served by the system, the definition provides that an individual is served by the system if he lives in or works in a place "to which drinking water is supplied from the system". Thousands of people live and work in the cities that STWA supplies water to. Thousands of people use the water supplied by STWA for human consumption. As such, STWA falls squarely within the definition of a PWS.

STWA claims it is not a PWS because it does not directly provide water to the individuals that ultimately use the water for human consumption. Yet, there is no requirement of direct delivery to the ultimate users in the definition of PWS. In fact, the phrase in the definition of PWS stating, "This term includes: any collection, treatment, storage, and distribution facilities

¹³ 30 TEX. ADMIN. CODE § 290.38(66).

under the control of the operator of such system . . .” contemplates that different parts of a system for the provision of drinking water to the public can be controlled by different entities, with each separately owned part being its own PWS. According to STWA’s interpretation, neither owners of treatment plants nor owners of wholesale water systems are PWSs unless each has at least 25 retail customers of its own.

Two TCEQ technical experts in the drinking water program testified in this case, Alicia Diehl¹⁴ and James Weddell.¹⁵ Alicia Diehl, holds a bachelors of science degree in chemical engineering. She also holds a Ph.D.; her masters work was on the formation of disinfection byproducts during ozonation and biologically active filtration and her dissertation was on factors affecting disinfection byproduct formation during chloramination. She has been employed at in the TCEQ drinking water program for over 15 years. James Weddell is engineer with over 20 years of experience in the TCEQ and its predecessors’ drinking water program. Both have vast knowledge of drinking water regulations, the history of drinking water regulations and the technical process required to produce and distribute safe drinking water. Both Alicia Diehl and James Weddell testified that the TCEQ’s longstanding interpretation of the definition of PWS includes treatment plants, wholesale providers, and thus, STWA. Dr. Diehl explained that individuals who consume the water are served by all components of the process from the treatment plant and throughout distribution. Both Dr. Diehl and Mr. Weddell testified that the regulatory scheme supports the TCEQ’s interpretation. They also testified about the technical process of producing and distributing safe drinking water and the importance of adhering to the proven technical process embedded in the regulations in order to ensure public health and safety in the consumption of drinking water.

Federal drinking water regulations are promulgated under the Safe Drinking Water Act (SDWA). The intent of the SDWA is to be inclusive in its application to water suppliers.¹⁶ The TCEQ administers SDWA regulations within the state of Texas, and thus, has primacy. Blake Atkins, Chief of the Drinking Water Section in Region 6 of the EPA, testified that treatment plants and wholesale providers such as STWA are PWSs, as that term is defined in the federal regulations.¹⁷ This is consistent with longstanding application of the SDWA.¹⁸ The language at issue in the state definition is virtually the same in the federal regulation. Moreover, Mr. Atkins

¹⁴ Tr. Vol. 1 at 19-144, Vol. 3 at 88-99.

¹⁵ Tr. Vol. 1 at 200 through Vol. 2 at 35, Vol. 3 at 64-88.

¹⁶ See, e.g., ED 36.

¹⁷ Tr. Vol. 1 at 144-200; ED 39; Atkins memo that STWA is a PWS.

¹⁸ See, e.g., ED 38 at 0009-12, 0028-42, 0050, 0061-65

testified that in order for Texas to have primacy and administer the SDWA, the Texas definition of PWS had to be approved by the EPA as at least as stringent as the federal definition. Consequently, if STWA is a PWS under the federal definition, then it must necessarily be a PWS under the Texas definition. Otherwise, Texas' primacy may be compromised.

The ED and EPA's interpretation of the definition of PWS also makes technical sense. Because drinking water is ingested, it must be maintained in a sanitary environment after treatment and throughout distribution until it is ultimately used for human consumption in order to prevent unacceptable risks to human health.¹⁹ Raw water is treated to produce potable water (primary treatment). Potable water requires further treatment to maintain its potable quality during distribution. In order to maintain the potable quality of water, a disinfectant residual must be maintained (secondary or maintenance treatment). Once potable water is produced, it cannot be presumed to remain potable and uncontaminated if it passes through an unregulated entity. The technical process in the drinking water regulations require the maintenance of a disinfectant residual from the point of primary treatment until the water reaches customer service lines. Additionally, the drinking water regulations ensure sanitary equipment and infrastructure are used in the distribution of drinking water.²⁰ If only retail water providers were to come within the definition of PWS, then owners and operators of treatment plants and distribution components would fall outside the definition unless each had their own retail customers. This would cause part of the technical process used to produce and distribute reliably safe public drinking water to fall outside regulation. Additionally, as Mr. Atkins pointed out, the EPA and ED's interpretation allows for economies of scale and regionalization.²¹ For example, STWA's customers benefit from all being able to obtain water treated at the Corpus City treatment plant; each does not have to have its own treatment plant.

According to the plain language of the definition of PWS, the regulatory scheme, and the long-standing application of the definition of PWS, STWA is a PWS.

B. The statutes and rules governing public drinking water mandate utilizing technically and scientifically sound principles; there is one technical process in the production and distribution of public drinking water contemplated in the rules and that process relies on the definition of PWS encompassing that entire process.

The THSC, the SDWA and the drinking water regulations require the use of scientifically

¹⁹ See, e.g., Tr. Vol. 1 at 19-144, Vol. 3 at 88-99.

²⁰ See, e.g., 30 TEX. ADMIN. CODE § 290.44.

²¹ Tr. Vol. 1 at 170-171.

proven methods for the production and distribution of drinking water to the public. The regulations contain one basic scientifically proven process for the production and distribution of potable water. The reliability of that process is predicated on the entire process being regulated. If only retail water providers are subject to regulation, the process is compromised.

i. The SDWA, H&SC and regulations require informed scientific and technical processes to ensure safe drinking water.

The legislative intent of the THSC and SDWA is to ensure a proven technically and scientifically sound process for the production and distribution of safe drinking water to the public. The purpose of the TCEQ's drinking water regulations in 30 TEX. ADMIN CODE ch. 290 is to comply with THSC chapter 341 and the SDWA.²²

The THSC requires that the process for producing and distributing water be sufficient to ensure safe drinking water. Section 341.031(a) of the THSC provides that:

- (a) Public drinking water must be free from deleterious matter and must comply with the standards established by the commission or the United States Environmental Protection Agency. The commission may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

Section 341.0315(a)(1) requires the Commission to ensure that public drinking water supply systems supply safe drinking water. Section 341.0315(a) states:

- (a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:
- (1) supply safe drinking water in adequate quantities;
 - (2) are financially stable; and
 - (3) are technically sound.

Notably in this case, it is not only important to ensure that public drinking water is potable after primary treatment in a treatment plant, it is also important to ensure that it is potable when it reaches the consumer. In order to accomplish this, the statutes and rules require maintenance of the integrity of potable water throughout distribution. For example, THSC section 341.033(a) states:

- (a) A person may not furnish drinking water to the public for a charge unless the production, processing, treatment, and distribution are at all times under the supervision of a water supply system operator holding a license issued by the commission under Chapter 37, Water Code.

²² 30 TEX. ADMIN CODE §§ 290.39 and 290.101.

This section demonstrates the legislative intent that the entire process of producing and distributing drinking water to the public is intended to be covered by the regulations, and necessary to ensure safe drinking water.

Additionally, section 341.033(e) states:

(e) The distribution system of a public drinking water supply and that of any other water supply may not be physically connected unless the other water is of a safe and sanitary quality and the commission approves the connection.

This section demonstrates a legislative intent to prohibit interconnections between public water systems and non-public water systems during distribution due to the potential contamination to the PWS and the water contained within it. According to section 341.033(e), if STWA were not a PWS, then it would be a violation of this section for its customers to be connected to it.

Currently, STWA is physically connected to its customers via pipe interconnections, pumps and tanks.

The SDWA requires drinking water regulations to be based upon sound scientific and technical principles. The SDWA states:

Use of science in decisionmaking.— In carrying out this section, and, to the degree that an Agency action is based on science, the Administrator shall use—
(i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and
(ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).²³

TCEQ rules also require adherence to scientific principles in the production and distribution of drinking water. 30 Tex. Admin. Code § 290.39(b) states:

(b) Reason for this subchapter and minimum criteria. This subchapter has been adopted to ensure regionalization and area-wide options are fully considered, the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations, or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable financial, managerial, technical, and operating practices must be specified to ensure that facilities are properly operated to produce and distribute safe, potable water.

Thus, the technical requirements and the technical process in the regulations are based upon sound scientific principles and practices. STWA is asking the Commission to allow its

²³ ED Z-3 at 0006-0007.

customer's water to be subjected to lesser treatment requirements without any evidence of acceptable data collection, peer-reviewed science or supporting studies in accordance with sound and objective scientific practices.

- ii. Embedded within the regulatory scheme is one basic science-based technical model for producing and distributing safe drinking water which includes primary treatment to produce potable water, and secondary treatment to maintain the potable quality during distribution to the ultimate consumer.**

There is one basic technical process contemplated in the regulations for producing and distributing safe drinking water, and it relies on the definition of PWS encompassing that process—which includes the treatment plants that produce potable water and maintenance of the potable water throughout distribution to the ultimate consumers of the water.

A simplified description of the process for producing and distributing potable water is provided to demonstrate the technical implications of the issues in this case. The first step in the process is the evaluation of source or raw water, which is typically surface water, ground water or groundwater under the direct influence of surface water.²⁴ An evaluation is necessary to determine the primary treatment required to produce potable water. The second step is to provide primary treatment necessary to produce potable water.²⁵ The third step is to provide maintenance treatment (i.e. secondary treatment) in a secure environment from the point of primary treatment throughout distribution to the customer service lines in order to maintain the quality of the potable water.²⁶

In this case, a Corpus Christi treatment plant (Corpus Plant) provides the primary treatment of surface water to produce potable water. STWA owns and maintains a pipeline. It obtains water treated at the Corpus Plant via pipeline interconnection and transports the water via pipeline to six city and community customers. STWA's customers obtain the water via interconnections. The customers continue to transport the water via their own pipelines to individuals within each community. Each of STWA's customers provide maintenance or secondary treatment to the water during the timeframe that the water is within their infrastructure. STWA argues that since its customers provide secondary treatment once the water reaches their infrastructure, taking STWA outside of regulation is not a public safety issue. The ED disagrees, and all three expert witnesses testified that it is a safety issue.

²⁴ See, e.g., 30 TEX. ADMIN. CODE §§ 290.41, 290.111 and 290.116.

²⁵ See, e.g., 30 TEX. ADMIN. CODE § 290.111.

²⁶ See, e.g., 30 TEX. ADMIN. CODE §§ 290.44 and 290.110.

Understanding the interdependence of primary and secondary treatment is important to understand the technical implications in this case. The purpose of primary treatment is to produce potable, or drinking, water from a known source of raw water. Potable water is water treated such that the contaminants within it are below the maximum contaminant levels. Primary treatment can include such processes as coagulation, flocculation, clarification, filtration, and disinfection.

Some of the contaminants in potable water are microorganisms. Microorganisms grow. In order to keep contaminants below the maximum contaminant levels, the regulations require secondary treatment from the point of primary treatment to the consumer service lines (which are the pipes owned by the individuals in businesses and residences that ultimately consume the drinking water). The infrastructure from the point of primary treatment to the consumer service lines is defined as the distribution system.²⁷ This is a technical requirement, based on sound scientific principles, necessary for providing safe drinking water to the public. The secondary treatment is maintenance of a minimum disinfectant residual throughout the distribution system.

Secondary treatment keeps contaminant levels low. Secondary treatment is necessary to prevent contamination of the potable water. Contamination can occur from such events as (1) regrowth of microorganisms, (2) intrusion of contaminants due to minor infrastructure failures, or (3) dislodged contaminants from pipe biofilm. For secondary treatment to be effective, it must be maintained throughout the distribution system. Secondary treatment is designed to maintain potable water while it is distributed. In order to be effective, it is dependent on all aspects of the technical process being adhered to. Secondary treatment is not the equivalent of primary treatment.

The technical model in place requires a disinfectant residual from the point of primary treatment to the ultimate customer. It requires the infrastructure carrying the drinking water be sanitary and secured against potential intrusion. There is no evidence that if these or other technical requirements are not adhered to, water is safe to drink. The purpose of these technical and science-based requirements is to ensure public health and safety; they should not be disregarded.

²⁷ 30 TEX. ADMIN. CODE § 290.38(21).

This is the technical model required in state and federal regulations and utilized across the nation. The rules are designed around this basic technical model. This regulatory model for providing safe drinking water to the public is based upon a collaboration of experts in the field and after much scientific research and study. This informed technical model is based on sound scientific principals and designed to ensure safe drinking water. STWA proposes a different technical model without evidence that its model is based on sound scientific principles. STWA provided no expert testimony on this issue. Mr. Atkins, Dr. Diehl and Mr. Weddell all testified as to this technical model and all testified that this is a public health issue. They all testified that STWA's current inability to maintain a disinfectant residual is already a health and safety concern. The ED and EPA's interpretation maintains the integrity of the technical model embedded within the regulatory scheme.

iii. The ED and EPA's interpretation is consistent with the technical model within the rules and STWA's interpretation of PWS is not consistent with this technically sound model.

The ED's interpretation is that entire technical process is within definition of PWS because treatment plants and distribution system components, in addition to retail water providers, serve the individuals that ultimately drink the water. Treatment plants and the entire distribution system all contribute to the safety of the drinking water. The individuals who consume the water are not served well if these constituents are not in compliance with regulations.

STWA's interpretation would remove from the definition, and thus from regulation, any water system that does not have at least 25 retail customer, and would require all public water systems to have retail customers. According to STWA's interpretation, treatment plants without retail connections are not subject to regulation. According to STWA's interpretation, owners of part of a distribution system are not subject to regulation if they do not have their own retail customers. This is not contemplated in the rules or technical model. There is no provision in the rules for treating what was once potable water. There is no provision in the rules for testing and/or treating water from an unregulated source. There is no provision in the regulations for how to address the situation STWA proposes in this case--in which after primary treatment but before distribution to the ultimate consumers, potable water transfers to an unregulated entity and the distribution requirements in the rules are not met. There is no provision in the rules for treatment of water when a disinfectant residual has not been maintained. There is no provision in the rules for treatment from possible contamination due to the transfer of potable water to an unregulated entity before distribution to consumers. On the contrary, the regulations require

secondary treatment from the point of primary treatment to the ultimate consumer. The regulations require a secure and sanitary infrastructure throughout distribution. These are requirements in the science-based technical methodology in the regulations. The regulations are consistent with the ED and EPA's interpretation of the definition of PWS. STWA's interpretation is not contemplated in the regulations and not consistent with the informed scientific and technical requirements in the rules. STWA proposes an untried and unstudied technical model that is not based on sound scientific principles.

STWA proposes that it is acceptable to provide secondary maintenance only at the end of the distribution system and right before the water flows to the customer service lines. Yet, STWA offered no expert testimony that this treatment technique is safe. In fact, the three experts in this area who testified, all testified that it is not safe or based on sound scientific principles. If it were acceptable to not require maintenance treatment throughout distribution and instead, only do secondary treatment right before the water is provided to consumers then the rule requiring treatment throughout distribution would be meaningless. Through STWA's interpretation, STWA is attempting to introduce new less protective treatment techniques that are not based on sound scientific principles. STWA relies on the fact that there have been no detectable health problems with STWA's water thus far. However, this "so far, so good" analysis is not based on sound scientific principles and is insufficient under the SDWA and the THSC.

It is also important to consider that STWA has thus far been under TCEQ regulation and in substantial compliance with regulations. If STWA were to be taken out from the regulatory umbrella such that it is not required to comply with any of the regulations, it is unclear what the quality of its water would be.

There seems to be assumptions in STWA's position that maintenance treatment is all that is at issue in this case. STWA has had the benefit of TCEQ oversight to assist STWA in ensuring safe drinking water to its customers. If STWA is not subject to regulation, STWA will also lose the benefit of regulatory oversight in ensuring customers that it provides safe drinking water. STWA benefits from regulation because its customers can rely on STWA's compliance with regulations requiring STWA to maintain a secure infrastructure, monitor, and provide the necessary treatment. It is unclear what treatment will be required by STWA's customers if STWA were to have no regulatory oversight, since STWA's customers would be receiving water from an unregulated source. There would be no regulatory oversight ensuring that STWA's water is adequately monitored for contamination, maintained in a secure infrastructure and treated from the point of primary treatment to the ultimate consumers. STWA's position may

be that it would still comply with regulations except for the requirement to maintain a minimum disinfectant residual. Since STWA would be outside the TCEQ's jurisdiction, the TCEQ would be in a position to have to rely on STWA's word that it complies. This suggestion to rely on STWA's self-regulation is contrary to the legislative mandate to regulate public drinking water to ensure that it is safe.

STWA is asking the Commission to reinterpret the definition of PWS such that the regulations do not apply to wholesale "middle men" providers of public drinking water and to nullify the requirement that a disinfectant residual be maintained from the point of primary treatment to the ultimate consumer. The science needs to be there to support a new interpretation, and there is no evidence that this new interpretation is scientifically and technically sound. Public safety relies on the technical design in the rules; a change in the technical design without adherence to scientific principles compromises safety.

C. The definitions and regulatory scheme demonstrate that the definition of PWS is intended to include STWA; under STWA's interpretation, the definitions and regulatory scheme lose meaning and the technical process proven to ensure safe drinking water is compromised.

TCEQ rules and other definitions support the ED and EPA's interpretation of the definition of PWS.

Definitions such as "wholesale system," and "combined distribution system" indicate that the regulations do not pertain only to the entity which directly provides water to the ultimate end users. The definition of "wholesale system" is:

A public water system that delivers water to another public water system.²⁸

The definition of "combined distribution system" is:

The interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

(A) The executive director may determine that the CDS does not include certain systems based on factors such as providing or receiving a relatively small amount of water or only on an emergency basis.

(B) A public water system may be determined to be in a different CDS for the purposes of compliance with regulations based on the Stage 2 Disinfection Byproducts Rule (DBP2) and the Long Term Stage 2 Enhanced Surface Water Treatment Rule (LT2).

²⁸ 30 TEX. ADMIN. CODE § 290.103(37).

- (i) For the purposes of raw water monitoring under LT2, the CDS shall be based on the retail and wholesale population served by each surface water treatment plant or plant treating groundwater under the direct influence of surface water.
- (ii) For the purposes of DBP2, the CDS shall be determined based on the retail population served within each individual system's distribution system.²⁹

These definitions provide identifiable subsets of PWSs. These are not circular definitions under the ED and EPA's interpretation of PWS. According to the ED's interpretation of the definition of PWS, a wholesale system meets the definition of PWS, and is a type of a PWS. There would be no need for a definition of "wholesale system" if wholesale systems were not encompassed in the definition of PWS. These definitions are manifestations of the intent that the definition of PWS includes these subsets. These definitions would have little or no application if the scope of the definition of PWS were to only include retail water providers. For clarification purposes, the ED does not contend that the definition of "wholesale system" makes STWA a PWS. The ED contends the definition of PWS makes STWA a PWS. These definitions are only circular under STWA's interpretation.

The regulatory scheme also supports the ED's interpretation. TCEQ regulations require that a minimum disinfectant residual be maintained throughout the water in the distribution systems for PWSs.³⁰ This rule is only meaningful if the entire distribution system is subject to regulation. The distribution system starts at the point of primary treatment and continues until the consumer service lines. A requirement to ensure public safety is secondary treatment from the point of primary treatment throughout distribution until the consumer service lines. Under STWA's interpretation, this requirement would be nullified in cases with wholesale providers since there would be sections of the infrastructure between primary treatment and the consumer service lines which would not be subject to regulation and therefore not subject to the secondary treatment requirements. The ED's position is that the definition of distribution system and the technical requirements for the distribution system demonstrate that STWA's interpretation of PWS has never been contemplated or intended. If public safety and sound scientific principles mandate that potable water needs to be maintained in a secure sanitary infrastructure and subject to secondary treatment from the point of primary treatment until it reaches the ultimate consumers, then that entire infrastructure necessarily must be subject to the technical requirements. The ED is not contending that STWA must comply with distribution

²⁹ 30 Tex. Admin. Code § 290.103(2).

³⁰ 30 TEX. ADMIN. CODE §§ 290.110(b)(4) and 290.46(d)(2)(B).

requirements even if it is not a PWS. The ED is contending that STWA is a PWS and must comply with distribution rules. The ED is contending that the entire distribution system serves the individuals who consume the water, and thus the entire distribution system comes within the definition of PWS. Under the ED and EPA's interpretation of the definition of PWS, these regulations are harmonized, have meaning and the proven technical model for providing safe drinking water to the public stays intact.

D. The ED and EPA's interpretation supports regionalization, allows flexibility in business operations and promotes efficiency.

The ED and EPA's interpretation supports regionalization, allows flexibility in business operations and promotes efficiency. Section 341.0315(b) of the THSC provides:

The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.

The ED's interpretation of the definition of PWS supports regionalization. It allows small PWSs to outsource primary treatment to a regional treatment plant since the treatment plant and subsequent distribution fall within the definition of PWSs under the ED's interpretation. Under STWA's interpretation, small PWSs would not be able to outsource to a regional plant or outsource distribution unless that those facilities also have independent retail customers.

The ED and EPA's interpretation allows flexibility in business operations, which also supports regionalization. It allows for business specialization. It supports business models that specialize in primary treatment by not requiring a treatment plant to also engage in the business of a retail water system in order to obtain the marketability benefits that being subject to regulation can bring. Similarly, under the ED's interpretation, a business entity can specialize in wholesale distribution or retail distribution as well. It allows retail providers to outsource primary treatment. It allows primary treatment providers to focus on treatment instead of expending resources counting meters and billing customers.

The ED's interpretation also promotes efficiency. Communities such as STWA's customers can outsource primary treatment and distribution instead of each having to be responsible for its own primary treatment. If STWA were not a PWS, each of STWA's customer's might have to have its own primary treatment facility to comply with drinking water requirements.

The ED and EPA's interpretation also promotes efficiency by protecting the potable quality of water from the point of primary treatment through distribution to the ultimate

consumer. Under the ED's interpretation, the integrity of the entire distribution system is maintained. This prevents potable water from becoming compromised and/or contaminated which could require evaluation and retreatment. Under the ED's interpretation, since potability is maintained throughout distribution, there is one evaluation of source water, and one primary treatment necessary.

- E. The language in the EPA guidance relied upon by STWA and the ALJ is distinguishable from this case because the PWSs referenced in the EPA guidance comply with all technical requirements within the SDWA; STWA's customers would not comply with the SDWA if STWA is not a PWS.**

STWA relies on, and in the PFD the ALJ is persuaded by, an EPA guidance after the 1996 revision to the federal definition of PWS.³¹ STWA claims that a contract is required between the PWS and those individuals served by the PWS. However, this guidance makes clear that no contract is required. As STWA points out, the guidance states that for suppliers to be providing water to users, there must be an explicit or implied arrangement or agreement of some kind.³² The guidance goes on to clarify that there are two factors when making a determination of an arrangement or agreement:

1. Whether the supplier knows or should know that the water is being taken, and
2. Whether the supplier has consented to it being taken.³³

It is important to understand the context of the guidance. The 1996 revision to the definition of PWS added open conveyances, such as canals, to the definition of what could be considered as part of a PWS. Prior to that, the definition was limited to piped conveyances. This guidance is intended to assist in evaluating those situations without a contract, and without closed pipes. The fact that the conveyances are open allows for unauthorized diversions of the water. This guidance explains that unintended diversions will not be considered in determining whether an open conveyance is a PWS, as long as the supplier takes actions a property owner would ordinarily take to maintain property rights. The guidance goes on to state:

As stated above, where a water supplier knows or should know that the requisite number of connections and/or individuals are using water it supplies for human consumption, the primacy State or EPA will consider the system to be a PWS.³⁴

Thus, the critical elements are knowledge and allowance. STWA knows (and allows) that "the

³¹ STWA 1, Tab 11.

³² *Id.* at 41941.

³³ *Id.* at 41942.

³⁴ *Id.*

requisite number of connections and/or individuals are using water it supplies for human consumption.” According to this guidance, STWA is a PWS.

The ALJ found the following language in the EPA guidance persuasive in concluding that STWA is not a PWS:

It does not count as a “service connection” where a water supplier indirectly provides water for human consumption to a municipality or pass-through entity which actually provides the water to end users, and which itself is a [public water system] that must meet [Safe Drinking Water Act] requirements.³⁵

While the ED’s discussion about STWA being a PWS has been about the number of individuals served instead of the number service connections, the ALJ did not find that material. The ED does not contend that this passage is distinguishable because it is a discussion of service connections instead of individuals served. The PWSs in the guidance are distinguishable because primary treatment has not occurred and secondary treatment is maintained as required in the SDWA.

The context of the EPA guidance is material in understanding the distinction. This guidance was directed to the added regulated community of open conveyances, such as irrigation canals. Irrigation canals carry raw or untreated water and primary treatment has not occurred. PWSs downstream of irrigation canals do comply with SDWA requirements. For these PWSs downstream of an irrigation canal, once there is primary treatment, secondary treatment is maintained from the point of primary treatment throughout distribution. In addition, these PWSs would have to comply with the other requirements throughout distribution such as monitoring requirements and infrastructure requirements. These are the downstream PWSs contemplated in the EPA guidance, and they comply will SDWA requirements.

In contrast, the PWSs downstream of STWA would not be in compliance with the SDWA if STWA were not a PWS because after primary treatment, there would not be treatment maintenance throughout distribution (i.e. from the point of primary to customer service lines) as required. Additionally, the testimony of both STWA and STWA’s customers indicate STWA’s customers do not and are not prepared to do primary treatment. In fact, since the rules only contemplate one basic technical model and contemplate the maintenance secondary treatment from the point of primary treatment throughout distribution, there are no rules covering what STWA’s customers would need to do to be in compliance with the SDWA. STWA’s customers

³⁵ STWA Ex. 1 at Tab 10, p. 1 of 2.

only do the final leg of maintenance treatment from the point they obtain the water from STWA to the customer service lines. This is insufficient to meet all SDWA requirements.

F. The ED agrees that there is no definition of “serve” in the regulations, but notes that other uses of that term within the rules demonstrate that a direct relationship with the ultimate consumer is not a requirement.

While there is no definition of “serve” as that term is used in the definition of PWS, uses of the term elsewhere in drinking water regulations demonstrate that it is not intended to have an implied “directness” requirement.

In the definition of “combined distribution system” (CDC), the rule states that treatment plants serve their retail population, in addition to their wholesale population. The definition includes the following provision:

(B) A public water system may be determined to be in a different CDS for the purposes of compliance with regulations based on the Stage 2 Disinfection Byproducts Rule (DBP₂) and the Long Term Stage 2 Enhanced Surface Water Treatment Rule (LT₂).

(i) For the purposes of raw water monitoring under LT₂, the CDS shall be based on the **retail and wholesale population served by each surface water treatment** plant or plant treating groundwater under the direct influence of surface water.

(ii) For the purposes of DBP₂, the CDS shall be determined based on the retail population served within each individual system’s distribution system.^[1]

It is logical that if treatment plants serve retail and wholesale populations in this context (with no direct connection requirement), then there is no direct connection requirement in the use of the word “serve” in the definition of PWS. The definition of PWS identifies the scope of the regulatory jurisdiction. It does not seem logical that an unqualified use of the word “serve” identifying the scope of regulation would be construed more narrowly than a qualified use of the word within a regulation.

The ALJ states that it seems unusual for the regulations to clarify in this provision when connections or populations count for purposes of identifying a system, and not to so clarify in the definition of PWS. To address this concern, the ED would like to point out that in this provision, the clarification is necessary to distinguish what population should be counted when

^[1] 30 Tex. Admin. Code § 290.103(2) (emphasis added).

determining which technical requirement applies. The distinction between these requirements demonstrates that they are consistent with the ED's interpretation that downstream populations are counted when determining whether an entity is a PWS.

LT2 monitoring is raw water monitoring and is a monitoring required to be performed by the treatment plant. According to this provision, when determining the extent of monitoring, the entire downstream population (i.e. wholesale and retail population) is considered. Disinfectant byproducts are harmful byproducts that can result from secondary treatment and the DBP2 applies to all entities who perform secondary treatment. This provision makes the monitoring and regulatory requirements of the DBP2 based on the downstream retail population of each system. In this rule the retail population is imputed to wholesale providers. In both instances of this provision, the downstream retail population is imputed to the upstream PWSs. Similarly, in the definition of PWS, the downstream populations are imputed to the upstream systems.

G. The ED and EPA's interpretation is not over-reaching; it maintains the integrity of technical process while allowing for business operation flexibility.

The ED wants to clarify his position to address the ALJ's concern that the ED's interpretation is over-reaching. The ED's position is that the definition of PWS does not merely capture retail water providers, but instead captures the entire process of producing and providing drinking water to the public. The ED maintains that a change in ownership of a section of pipe does not change the necessity of maintaining a safe environment in that pipe for potable water to flow through (such as maintaining a disinfectant residual and infrastructure integrity) to ensure that the water that flows through those pipes and ultimately to customers is safe for human consumption. Additionally, the ED's interpretation allows flexibility in business operations. It accommodates outsourcing, regionalization, specialization, and business efficiencies. As mandated by the legislature, the TCEQ is in the business of regulating the process of producing and distributing safe drinking water to the public; it is not in the business of regulating business.

As noted in the EPA guidance and by the ALJ, if a downstream PWS is in compliance with drinking water requirements then it may not be imputed to an upstream provider of water. However, that is not the case in this instance. If STWA were not a PWS, then STWA's customers (PWSs themselves) would not be in compliance with treatment and distribution requirements.

III. If STWA's interpretation were adopted, STWA's customers would not be in compliance with federal and state regulations.

STWA claims that it is unnecessary for it to be regulated since its customers provide secondary treatment and are subject to TCEQ and federal regulations.

While STWA's customers are subject to regulation, if STWA were not a PWS, then the customers would not be in compliance with the regulations. If STWA were not a PWS, then STWA's customers would not be providing water that was produced and distributed in accordance with the technical requirements. The distribution requirements would not be met from the point of primary treatment to the consumer service lines as required by the rules. STWA's customers do not do primary treatment. Primary treatment occurs at the Corpus Plant. In order to comply with drinking water regulations, the distribution rules must be met from the Corpus Plant (primary treatment) to the ultimate consumer lines. For example, a disinfectant residual must be maintained. The rules do not allow only partial secondary treatment. Because STWA's customers would not be complying with this treatment requirement as well as other treatment and distribution rules if STWA were not a PWS, they would not be out of compliance with the regulations.

Additionally, the THSC does not allow distribution systems of PWSs to be physically connected to a non-public water system.³⁶ If STWA were not a PWS, then STWA's customers would be in violation since they are physically connected to STWA.

IV. There are equities that favor the ED and EPA's interpretation.

As stated above, the ED's interpretation allows STWA's customers to outsource primary treatment and not have to incur the cost themselves. They rely on the Corpus Plant for primary treatment instead of each having to bear the cost of a treatment plant. While the cost projection for STWA to comply with the minimum residual disinfectant requirement is substantial, there is no evidence of what it would cost each of STWA's customers in order to comply with all treatment and distribution requirements.

The ED's interpretation gives STWA's customers more business options to address their drinking water needs by allowing outsourcing and not requiring STWA's customers to bear the entire regulatory brunt. According to STWA's interpretation, its customers would have to bear the entire regulatory burden since its customers are the retail water providers.

³⁶ THSC § 341.033(e).

Additionally, if STWA is found to be a PWS and required to comply with regulations, the individuals who ultimately consume the water will have the safety benefits that the scientifically informed technical process within the regulations provides. STWA, through this case, seeks to provide those individuals less protective treatment techniques using a "so far so good" analysis as the justification or basis for the lesser treatment techniques. STWA solely relies on the fact that as of yet, there are no documented instances of harm. It is important to note, that thus far, STWA has been in substantial compliance with regulations and subject to regulatory oversight. The quality of STWA's water will become even less clear if STWA is removed from the regulatory umbrella.

Three esteemed experts in this field all testified about current health concerns over STWA's failure to comply with the minimum disinfectant residual requirement throughout its distribution infrastructure. All testified that failing to maintain the required minimum disinfectant residual is contrary to the informed technical process used in the regulations to ensure safe drinking water and does increase health risks.

V. STWA's interpretation has broad implications beyond the facts of this case.

STWA's reinterpretation of the definition of PWS has broad implications beyond the facts of this case. Even within this case, it is unclear what would be required of STWA's customers if STWA were not a PWS. It is also unclear what the the monetary and public health cost would be.

Aside from this case, STWA is asking the Commission to reinterpret the definition of PWS in a manner that it has never before been interpreted. STWA's interpretation is not consistent with the regulatory scheme and the technical process embedded within that scheme. According to STWA's interpretation, segments of the technical process for producing and distributing public drinking water would fall outside regulation. There currently are no regulations to accommodate this; there are not treatment techniques for water that was once potable and is being provided by an unregulated entity. STWA asks the Commission to take the process of producing and distributing water into uncharted territory with no adherence to scientific principles.

Texas' primacy to enforce the SDWA relies on the fact that Texas' rules are at least as stringent as the federal regulations. STWA is asking the Commission to determine that Texas' definition of PWS should be more narrowly construed than the EPA construes the federal definition of PWS. This would cause Texas' regulations to be less stringent than the EPA's. Federal regulations require that for Texas to have primacy, it must have regulations at least as

stringent as the EPA's. It is unclear what the EPA would do and what would happen to Texas' primacy if the Commission construes the definition of PWS to be less stringent than the EPA construes the federal definition.

STWA's interpretation could create a large unintended loophole. According to STWA's interpretation, the entity that directly serves the individual has to do all treatment requirements under the rules; according to STWA, those without direct contact are not subject to regulation or responsible for treatment. In theory, PWSs could avoid regulation through contractual arrangements between more than one entity in order to change ownership of the pipeline near ultimate consumer service lines and have each pipeline water system that directly provides water to customers serve less than 25 individuals and less than 15 connections. Entities could further provide that no two systems on adjacent land tracts are owned by the same entity. This could allow what would otherwise be public water systems to evade regulation.

VI. The ED understands that STWA faces a technical challenge; the ED's recommended corrective actions allow STWA additional time, approximately two years, to address this challenge.

The evidence at hearing was that, as of this date, the options STWA is considering to maintain the residual disinfectant are costly.³⁷ The ED understands that STWA faces a challenge towards the end of its 42-inch diameter pipe. Perhaps there is a solution that has not been discovered. The ED appreciates that challenge and recommends allowing STWA additional time than typically provided for in the recommended corrective actions. The ED has recommended giving STWA approximately 2 years to address this issue. While the solution to STWA's challenge is unclear, the solution is not reinterpreting the definition of PWS and deregulating STWA and consequently deregulating part of the distribution system.

VII. The ED's exceptions to specific provisions in the ALJ's proposed order.

The ED submits the following exceptions to the language in the Proposed Order.

A. Finding of Fact No. 17.

The ED asks that the name "Peipay Tang" in this Finding of Fact be changed to "Peipey Tang" to provide a spelling correction.

B. Conclusions of Law Nos. 9 and 10.

³⁷ STWA 25.

The ED respectfully recommends that Conclusion of Law No. 9 be removed and that the current Conclusion of Law No. 10 be revised as follows:

STWA is ~~not currently~~ a public water system because it ~~does not have at least 15 service connections or serves~~ at least 25 individuals at least 60 days out of the year. 30 Tex. Admin. Code § 290.38(66).

C. The ED recommends an additional conclusion of law.

The ED respectfully recommends that a conclusion of law be added to the end of the current Conclusions of Law stating:

STWA should be required to take corrective actions necessary to bring it into compliance with the violations in this Order.

If there is a determination that STWA is a PWS, adding this conclusion of law would be consistent with the conclusion of law regarding the penalty, which is currently Conclusion of Law No. 28.

D. Ordering Provision No. 3.

The ED respectfully recommends that Ordering Provision No. 3 be revised to contain the additional underlined language:

The payment of the administrative penalty listed herein and STWA's compliance with all the terms and conditions set forth in this Order will completely resolve the violations set forth by this Order. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.

If there is a determination that corrective actions are warranted, then the underlined language is standard language used when there are corrective actions in an order.

E. The ED recommends an additional ordering provision to include corrective actions.

The ED respectfully recommends that an additional ordering provision be inserted after the current Ordering Provision No. 3 so that the order will include the ED's recommended corrective actions under the ordering provision regarding the penalty. The ED recommends that this new Ordering Provision No. 4:

4. STWA shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of the Order, STWA shall:
 - i. Begin complying with the conditions of the exception to use a disinfectant other than chlorine, including but not

limited to, monitoring and recording free ammonia levels;
and

- ii. Begin monitoring disinfectant residuals at representative locations in the distribution system, in accordance with 30 TEX. ADMIN. CODE § 290.110.
- b. Within 30 days after the effective date of the Order, STWA shall calibrate the continuous disinfectant analyzers at least once every 90 days using chlorine solutions of known concentrations, in accordance with 30 TEX. ADMIN. CODE § 290.46.
- c. Within 45 days after the effective date of the Order, STWA shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provisions 4.a and 4.b.
- d. Within 730 days after the effective date of the Order, STWA shall begin maintaining a minimum chloramine residual of at least 0.5 mg/L throughout the distribution system at all times, in accordance with 30 TEX. ADMIN. CODE § 290.110.
- e. Within 745 days after the effective date of the Order, STWA shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision 4.d.
- f. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

STWA shall submit the written certifications and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Enforcement Division, MC 149A

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

with a copy to:

Elston Johnson, Public Drinking Water Program, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIII. Conclusion

For these reasons, the ED respectfully requests the ALJ recommend and the Commission adopt the ED's exceptions.

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar
Executive Director

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by  

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2013, the foregoing document was filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day the foregoing document was served as indicated:

The Honorable Administrative Law Judge Craig Bennett
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649
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Via Electronic Filing

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