

copy

No. 36955-9-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WASHINGTON STATE DEPARTMENT OF HEALTH

Respondent - Appellee,

v.

VICTORY MOTEL

Plaintiff - Appellant.

RECEIVED
APR 11 2008
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR PIERCE COUNTY
HON. BRIAN TOLLEFSON, JUDGE
No. 07 2 07094 5

OPENING BRIEF OF THE APPELLANT

JIANGONG LEI, OWNER
VICTORY MOTEL
10801 PACIFIC HWY SW
LAKEWOOD, WA 98499

ON BEHALF OF VICTORY MOTEL
AND HIMSELF

TABLE OF CONTENTS

I. ISSUES PRESENTED AND ASSIGNMENT OF ERRORS 1

II. STATEMENT OF THE CASE 3

 A. Health Department Wrongly Designated
 Plaintiff's Well as Group A 3

 B. One of the Agencies Inspected Plaintiff's
 Well, But Lost the Report 4

 C. Instead of Admitting Mistakes, the Department
 Suggested Plaintiff Lied 6

 D. Health Department Determined to Put Plaintiffs
 Well in Group A; Employees Manipulated
 And Collaborated the Effort 8

 E. The Department Permanently Prejudiced against
 Plaintiff and Its Error Irreversible10

 F. County's Conduct Suspicious, a Fraudulent
 Letter Discovered12

 G. Plaintiff Complained Upwards, Upper Management
 Showed No Interest 14

 H. Violations Piled on, Department Issued Order
 And Penalty15

 I. Adjudication and Superior Court Review 18

III. STANDARD OF REVIEW 20

IV. ARGUMENT 22

 1. Plaintiff's Water System Is Not a Group A Public
 Water System under the State Law 22

2.	Plaintiff's Water System Is Not a Group A Public Water System under the Federal Law.....	32
3.	Plaintiff's Water System Is a Group B Water System	35
4.	Alleged Violations Did Not Occur	37
5.	The Department Is Bureaucratic, Negligent And Reckless	37
6.	The Department Acted in Bad Faith	41
7.	The Department's Conduct Unlawful and Its Application Of Law Selective	44
8.	Department's Actions Violated the Due Process And Equal Protection Clauses	47
V.	CONCLUSION	50

TABLE OF AUTHORITIES

CASES:

Delagrave v. Employment Sec. Dept., 127 Wn. APP. 596 (2005)	21, 22
Department of Labor and Industry v. Landon, 117 Wn.2d 122, 127, 814 P.2d 626 (1991)	21
Glaubach v. Regence BlueShield, 149 Wn.2d 827, 833 74 P.3d 115 (2003).....	22
Ludeman v. Department of Health, 89 Wn. App. 751 (1997)	21
Roller v. Dept of Labor and Indus., 128 Win APP. 922 (2005)	21
Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)	46

STATUTES AND RULES:

RCW 70.119A.020	23, 28
RCW 42.20.0400	45
RCW 34.05.570	20, 21
RCW 34.05.566	22
RCW 34.05.562	22
WAC 246-920-020	23, 28, 29
WAC 246-921-010	35, 36

FEDERAL LAW

42 USCS 300f(4)(A)..... 32
42 USCS 300f(4) 34
40 CFR 141.2 33, 34

OTHER PUBLICATIONS AND AUTHORITIES

Bluebook, DOH publication # 331-238, October 2003 36
DOH Updates, January 18, 2007 36

I. ISSUES PRESENTED

This case arises from intergovernmental conflicts. Bureaucracies, negligence, and personal interests and egos among various employees of two governmental agencies commingled in snowballing a little error into a chaos. The issues presented here are:

1. Whether the Department of Health was negligent, bureaucratic, and unlawful in the handling of Plaintiff's concerns and whether its conduct contributed to arbitrary and capricious decisions.
2. Whether the Department of Health and its Final Order violated the Due-process clause and the Equal Protection clause of the Fourteenth Amendment under the United States Constitution.
3. Whether the Department of Health erred in interpreting and/or applying the law with regard to the classification of Plaintiff's water pump/well.
4. If the Department did not err in interpreting and applying the law with regard to Plaintiff's water pump classification, then whether the alleged Plaintiff's violations actually occurred. Whether the Department faithfully executed the laws and followed its customary practice in determining violations.
5. Whether the Department of Health's Final Order and the

Review Court's Verbal Ruling entered on September 7, 2007 together with its revised Order on October 12, 2007 should be reversed and the civil penalty removed.

Errors Giving Rise to above Issues Are:

- a. Administrative Adjudicative Officer erred when he excluded Plaintiff's witnesses and evidence that show the department's negligence and wrongdoings, resulting in inequitable hearing and incomplete record.
- b. Adjudicative Officer erred by limiting the scope of the hearing only to the alleged violations whereas the question in this case is not whether the violations occurred but how they were created and requires an examination of the department's procedures.
- c. The Administrative Adjudicative Officer erred in the Final Order and in Finding of Facts by throwing out every piece of Plaintiff's evidence but including everything from the department including the clearly false and negligently printed computer form violations and upheld those violations.
- d. The Final Order erred in the interpretation and application of both federal and state laws regarding the classification of Plaintiff's water system.

- e. Reviewing court erred in dismissing the case on the bases of a blank deference to the agency without considering the merit of the case and then rubber stamp the defendant's Findings of Facts and Order.
- f. Reviewing court erred in not considering, and distinctly ruling on, each material issue as required by APA standard of review.

II. STATEMENT OF THE CASE

A. Health Department Wrongly Designated Plaintiff's Well as Group A.

Plaintiff, Jiangong Lei, owns a small 18-unit motel in Pierce County of the State of Washington. The motel has a well on its site, which supplies water to its customers. (CP at 53 and 60). The well mainly serves a transient population of approximately 13.5 people a day (CP at 53 and 60). Ever since the Plaintiff took over the property in 1996, there has never been any health issue such as E-coli. To the best of Plaintiff's knowledge the well has always been safely maintained and none of its previous owners had ever encountered any problem with the water they used. The water is tested every month for bacteria and every year for nitrate level. (In department's record, but not in AR). The well is meticulously taken care of by the owner.

In 1996 after Plaintiff took over the property, he noticed the

property has 18 units instead of 17 as previously registered with the county and with the state health department. Plaintiff then made corrections. Reporting correct number disadvantages Plaintiff, since Plaintiff's property tax, sewer assessments and other charges may increase. It likewise may increase the complexity of rules and regulations on his property. Plaintiff nevertheless believed it is the right thing to do. Shortly after Plaintiff corrected the unit information, The State Health Department designated Plaintiff's well as a Group A public water system. (CP at 60).

Group A public water system is a large water system as oppose to Group B public water system under state classifications. (See WAC 246-290 and 246-291). Typical examples of Group A water systems include municipality water supply or public school water systems. Plaintiff did not know this designation of his well is incorrect. He followed the more stringent Group A water system regulations even though his system is a Group B water system. (See WAC 246-291-010).

B. One of the Agencies Inspected Plaintiff's Well, But Lost the Report.

In 1996 congress passed the new Federal Safe Drinking Water Act (an amendment). Based on the new state and federal regulations on public water systems. Group A Public water systems are required to conduct a

sanitary survey (inspection) every five years. Group B water systems are not required. (see WAC 246-290 and 246-291). Had the Plaintiff's water system been correctly classified as a Group B system, the survey would not have been required of him.

In or around 1996, the State Health Department and Pierce County Health Department entered into some partnership to implement the new requirement. (AR 236-238). Under the agreement, county will do inspections on some of the smaller water systems within the category of Group A public water systems. The State Health department will do the rest.

On May 2, 2000, Plaintiff received a notice from the Pierce County Health Department, requiring a sanitary survey on his well. (AR 239-240). Based on the State Health Department record, the State also informed Plaintiff in 1999. (AR 236-238).

Shortly after receiving the notice, Plaintiff contacted both departments for inspection and requesting waiving inspection fee. Between the two departments, Plaintiff had a hard time figuring out who made decisions on fees. After several twists and turns, it was finally determined that Mr. Porter from the county health department would be the person to write to. Plaintiff then called Mr. Porter. Mr. Porter agreed to have the request sent to him. (County record).

Approximately one week after the Plaintiff sent out the letter, a health official visited the Plaintiff's property and conducted the inspection. But four years later, in year 2004, the State Health Department suddenly informed Plaintiff that his water system was not inspected and needed another inspection. (AR 244-246).

Plaintiff was surprised. He immediately contacted the state health department and told them the inspection was already done. Brian Boye from the state health department told Plaintiff the department doesn't have the record. (AR 318)

C. Instead of Admitting Mistakes, the Department Suggested Plaintiff Lied.

Plaintiff's property like many other rental properties has been inspected numerous times by various governmental agencies: by the city, by the fire department, by the county, county health department, by state health department, state health department's licensing department, by gas pipeline commission as well as many other agencies. Each of those agencies visited the property multiple times. Some produced a report after inspection; some didn't.

Plaintiff in this case was not given a report. Nevertheless Plaintiff searched his home hoping to find a copy of the letter that he remembered sent to one of the departments and hoping the letter would lead to some

discovery. When he couldn't find it, he told Mr. Boye about the letter and described to him the circumstance under which the inspection happened. Mr. Boye disbelieved him. (CP 78-128, See letter dated Dec. 6 2004).

Plaintiff later recalled the names of the three persons with whom he had had conversations regarding the inspection. Plaintiff told Mr. Boye the three names: Mr. Porter, Diana and Mr. Boye himself. Mr. Boye immediately denied he had any recollections of the conversation with the Plaintiff in year 2000. (Michell Cox from the county health department admitted her awareness of Mr. Boye's conversations with Plaintiff in a later meeting of May 2005.)

Plaintiff then requested to meet with him and two other individuals. Mr. Boye rejected it telling him: "if you really did it you should have a report to prove it." Mr. Boye further told Plaintiff neither the state health department nor the county had any record or information about the inspection. Instead of admitting mistakes, Mr. Boye suggested Plaintiff lied.

Mr. Boye later also filed a false report (CP 78-128, See report/memo dated Dec. 6, 2004). The report also suggested Plaintiff was untruthful. The report was accessed by the rest of the department causing irreparable damages to the Plaintiff in his dealing with the department.

D. Health Department Determined to Put Plaintiffs Well in Group A; Employees Manipulated and Collaborated the Effort.

While Mr. Boye was filing the false report and creating false impression of the Plaintiff among rest of the health department employees, Mr. Boye threatened enforcement. In November 2004, as the pressure mounting and crippled for not having any hard evidence to prove his innocence, Plaintiff started researching to educate himself. Plaintiff discovered the health department's error in the classification of his water system. He then immediately contacted the department to request a reclassification.

Plaintiff sent out his first request on November 22, 2004. (AR 319-321) In the following days, he did not receive the form required for reclassification (WFI Form). Instead, he received phone calls from two department officials: Mr. Boye and Ms. Quinn. The calls came shortly one after the other. Then the next day, the two officials called again and the calls were again shortly apart from each other. Plaintiff suspected the phone calls were coordinated and there were concerted efforts in the department to prevent him from correcting the error. This suspicion was later confirmed by Mr. Boye's false report in which he falsely denied Shasta Quinn and himself received Plaintiff's request. (CP 78-128, report dated Dec. 6 2004).

On December 1, 2004, Plaintiff sent out a second letter requesting

the form. (AR 322, 323) The letter also asked that the health department respond in writing if it had issues with the Plaintiff's request. Plaintiff still did not receive the form. Plaintiff also was not given any reason why the department chose to phone him instead of just sending him the form.

On December 13, Plaintiff complained to a supervisor (CP 78-128, see letter dated Dec. 13, 2004). After Plaintiff sent out the complaint, he received the form, but again, no one from the department ever responded to his complaint.

Plaintiff quickly sent in the form. On January 13, 2005 Plaintiff received the department's decision notice. The notice informed Plaintiff that his water system was still classified as Group A system due to the fact it serves at least 15 connections. (AR 324-327).

On March 11, 2005, Plaintiff was issued a notice of violation for not scheduling a sanitary survey (the inspection). (AR 256-259).

The violation was issued before Plaintiff was given any opportunity to explain. The Plaintiff was not given a report. His explanation was met with disbelief. His request to meet was denied. Despite circumstantial evidences exist, the department refused to look into it. Plaintiff's request for re-classification was also within his right, but the two department officials manipulated and collaborated to block him. When the block failed, they designated him a Group A anyway and issued

him a violation.

E. The Department Permanently Prejudiced Against Plaintiff and Its Error Irreversible.

Plaintiff believed the Health Department was unreasonable.

Plaintiff then requested a hearing on March 29, 2005 (AR 328-329). The health department told him official hearing was not available. Plaintiff continued his request, then a meeting was arranged.

The meeting was held at county site on May 18, 2005. (AR 330-333) Mr. Porter was originally scheduled to attend the meeting. But in the last minute, he was swapped out. Substitute him was his boss, Brad Harp, from the county health department. For some reason, another key person from the state health department was never scheduled for the meeting.

During the May 18, 2005 meeting, The health department repeatedly questioned him and tested him. Sometime in the meeting, the department asked the Plaintiff in great detail as to how the inspector showed up on his property, the duration of the inspection, and who led the inspector to the pump house. At another point, Bob James, the regional manager of the state health department, showed Plaintiff a report (a home made lie-detector) and asked him if this was the inspection the Plaintiff was referring to. Plaintiff replied he had never seen this report. Mr.

James then commented it was Not an inspection report. It was just a tag that they tagged onto the Plaintiff's water pump.

Plaintiff soon realized that the meeting was not a fair-minded meeting. The health department came to the meeting with a strong prejudice. Health department's objective for the meeting was to find out whether Plaintiff lied. In Mr. James own words, the purpose of the meeting is to find out what "documentation" the Plaintiff has regarding the inspection (AR 384-386), but it took Plaintiff quite a while to realize the department used a home-made lie-detector on him.

As the meeting continued, some circumstantial evidences showed up. Those were the evidences that Brian Boye flatly denied in the beginning. Among the evidences is the letter Plaintiff sent to Mr. Porter in 2000 and Mr. Porter's memo/notes held in the county (never was released to the Plaintiff). The evidences also include Michell Cox's awareness of Plaintiff's conversation with Mr. Boye regarding sanitary survey in year 2000, and Michell Cox own admission of her conversation with Plaintiff in year 2000 regarding the inspection. (County record). But in the end, the state health department still said: "even if you have done the inspection, the second five-year period is up and you still need to do an inspection." (AR 332 -333 and 260-261).

Plaintiff believed by then the department was permanently

prejudiced against the Plaintiff. Mr. Boye and his false report have caused irreparable damage. Plaintiff nevertheless pointed out a section of the WAC and told Mr. James that his water system is not a Group A system. Mr. James replied the WAC writers didn't do a good job. The federal law put Plaintiffs' water system in Group A.

F. County's Conduct Suspicious, a Fraudulent Letter Discovered.

The May 18, 2005 meeting was contentious (AR 330-333). When Plaintiff suggested that, if the two departments knew that the Plaintiff's water system was not inspected why for four years they didn't notify him, Mr. Harp from the county got very agitated. He picked up a pile of paper, vehemently waved them in the air, and raised voice: "We sent you letters after letters and you are saying we didn't do our job!" (The county health department didn't send him ANY letter during the four-year period. See below).

In the meeting the county officials were also very aggressive (AR 330-333). As soon as the meeting started, one county official accused Plaintiff "refuse to do the survey." At another point, another official threatened to "regulate him and verify him."

At the meeting, Mr. Harp agreed to give Plaintiff a copy of the letters he earlier waved in the air, the letters that would prove county had

repeatedly contacted the Plaintiff for inspection. Mr. Harp didn't do so. At the end of the meeting, Mr. Harp immediately walked over to the Plaintiff, shook his hand and showed him to the door. Plaintiff left without the letters. (AR 330-333) (CP 78-128, email dated may 31, 2005).

A few days later, the Plaintiff went to the county health department to request the copies. When the mail arrived, Plaintiff found a letter that never previously existed. The letter dated August 18, 2003 purportedly asked the Plaintiff to do an inspection. (CP 78-128, See document dated August 18, 2003).

Plaintiff had never seen this letter. The state didn't have this letter either. Among various state documents, which listed both state and county correspondences to the Plaintiff, this letter was never seen mentioned.

A state official also commented in writing: "It is my memory that Brad Harp had assembled all letters regarding the requirement to have a sanitary survey that either the Department of Health or Pierce County had sent to you. These letters should all be included in the copies that I sent to you." (CP 78-128, email dated June 6, 2005). But in the Complete Package that the state sent to the Plaintiff, there was no such letter of August 18, 2003.

Even Mr. Boye stated in one of his correspondences: "I sent you a

letter on February 18, 2003 stating that the Pierce County Health Department would contact you to set up a survey visit to your water system in 2003, but apparently this did not occur.” (CP 78-128, letter dated Feb. 11, 2004).

Plaintiff left the May 18, 2005 meeting with a strong hunch of who might have done the 2000 inspection. Plaintiff also believed the state health department had drawn its own conclusion. Plaintiff felt grossly unfair that the state didn't pursue county for truth, but continued to pressure a powerless individual who was caught up in this state-county fiasco.

With the discovery of the fraudulent letter as well as Mr. Boye's false report, Plaintiff believed it was necessary to let the department's upper management know.

G. Plaintiff Complained Upwards, Upper Management Showed no Interest.

On June 8, 2005, Plaintiff sent a letter to Governor Gregor complaining the departments handling of this matter. This time the department responded. In her response, Denise Clifford, the Director of the Drinking Water Division of the state health department made no mentioning of the department's problem and showed no interest in listening to Plaintiff's concerns. (CP 78-128, letter dated June 29, 2005)

On July 10, 2005, Plaintiff sent a letter to Denise Clifford again, pleading her to take the matter seriously. The response was: "...we do take your concerns seriously ... and will contact you at the number you provided if I need more information." (CP 78- 128, letter dated August 3, 2005). But she never contacted the Plaintiff.

As the situation became hopeless, Plaintiff asked the department to have the court adjudicate a decision for them on the law of water system classification. The department ignored him. (CP 78-128, letter dated August 28, 2005)

On February 7, 2006, Plaintiff made a final plea to Janice Adair, the chief of the environmental division. Plaintiff proposed a personal meeting with her to discuss the department's handling of the issue and a separate meeting with a department advisor on the issue of the law for water system classification. (CP 78-128, letter dated February 7, 2006). Ms. Adair did not personally respond to the proposal. Ms. Adair who once brought the hope to a resolution mysteriously disappeared.

H. Violations Piled on, Department Issued Order and Penalty.

In about the same time the Plaintiff was proposing a meeting with Ms. Adair, the regional office where the dispute originated and where Mr. Boye and Mr. James were officed started issuing more violations. Month

after month, a computer automatically generated form letter with exact same verbiage and contents were sent to the Plaintiff informing him new violations. (See AR 268, 270, 281, 288, 290, 293 and see the department's Final Order at page 7, AR 218-235).

While Plaintiff was trying to work out the issue with Ms. Adair, the regional office dramatically increase the sampling (water testing) requirement for the Plaintiff's water system and set the violation on an automatic motion. (AR 402-406). The department did so without even informing Plaintiff the new requirements.

Despite the disputes on the classification of Plaintiff's water system, Plaintiff had been faithfully following all rules under the stringent Group A public water system with the only exception of the pending sanitary survey. Plaintiff had been collecting one water sample every month as he always did before. (Department record not in AR). Despite his good faith effort to comply with the same Group A rules even though he believed his water system is Group B, Plaintiff was issued numerous violations.

Plaintiff received a violation on December 1, 2005, another violation on December 22, 2005, a third violation on January 30, 2006, a fourth violation in February 2006, and then a new violation every single month afterwards. Month after month, the department let its computer

crank out an automatic violation without a blink of an eye. (AR 224 -225).

None of the violations have anything to do with the disputed issue.

In April of 2006, the department sent Plaintiff yet another violation notice on top of all the automatically printed violation notices. (AR 289-291). The notice accused Plaintiff collected no sample at all for the previous month. In May of 2006, it issued Plaintiff another such notice. (AR 292-293). All of which are incorrect. (See lab reports AR 343-345, also see CP 78-128, letter dated may 3, 2004). But the department's water specialist, Ms. Stucky, testified during the adjudicative hearing: " well, I suppose you could have called us if you believe you collected the sample". (AR 407-408, sentence abridged and replaced with "- - -" by the reporter).

On June 28, 2006, the health department issued an Order. Then, on August 23, 2006, the department added up all the alleged violations and issued a Penalty totaling \$3150.00.

After the June 28, 2006 Order was issued to the Plaintiff, Plaintiff was still hoping to arrange a meeting with the department and resolve the classification issue. He sent out another letter asking once again if the department was willing to meet and discuss the law issue. Unfortunately his mail was returned. (CP 78-128, letter dated July 13, 2006 and the returned envelope).

I. Adjudication and Superior Court Review.

Pursuant to the Washington State Administrative Procedure Act (APA), a person adversely affected by an administrative decision has an opportunity to present his case in an adjudicative hearing. Plaintiff filed a petition for adjudication. Then a preadjudicative hearing conference was held on January 2, 2007.

During the pre-hearing conference, the adjudicative officer disallowed three critical witnesses as irrelevant since Plaintiff was trying to show the department's wrongdoings. During the prehearing, the adjudicative officer also held that the hearing will be focused on Plaintiff's violations (2.1, 2.2, 2.3, 2.4 in the department's order) or lack of. Any evidence or witnesses intent to show department's negligence are likely to be objected by the department's counsel and he would make rulings as it goes.

As a result of these rulings, Plaintiff cancelled all the witnesses and submitted only evidences that show Plaintiff had a bona fide dispute with the department and that he was not ignoring them. (AR 449-452).

On January 23, 2007, the adjudicative hearing was held. During the hearing, almost all of the Plaintiff's exhibits/evidences were objected and needed to be authenticated. Even a letter showing Plaintiff requesting meeting was objected on the basis that it intends to show the department

negligence. (AR 449-452).

On March 16, 2007, the adjudicative officer issued a final order, upholding the department's order and penalty. The final order listed all of the department's documents. All of the computer printed form letters were listed as evidence against him. The final order threw out all of the Plaintiff's documents, including Plaintiff's harmless requests and responses, picturing him a lawless person who completely ignored the department. (AR 218-235).

On April 13, 2007, Plaintiff filed a petition for judicial review with the Pierce County Superior Court. On September 7, 2007 Judge Brian Tollefson dismissed the case quoting judicial deference. (RP at 2-3, texts altered and edited). Upon debate between Plaintiff and the Judge regarding the appropriateness of such a dismissal, the judge asked Plaintiff and Defendant each prepare a Finding of Facts and Conclusion of Law to present on October 12, 2007. (RP at 4-6). On October 12, 2007, the Judge accepted the Defendant's Finding of Facts and Conclusion of Law without a debate, allowing Plaintiff to raise only objections and add his objections to the Defendant's pre-prepared Order.

Plaintiff filed an appeal on November 9, 2007. The case now comes to the Court of Appeals for review.

III. STANDARD OF REVIEW

RCW 34.05.570 provides that, in review of agency order in adjudicative proceedings, relief shall be granted if the court finds:

1. The order, or statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;
2. The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;
3. The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;
4. The agency has erroneously interpreted or applied the law;
5. The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes record for judicial review, supplemented by any additional evidence received by the court under this chapter;
6. The agency has not decided all issues requiring resolution by the agency;
7. The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating fact and reasons to demonstrate a rational basis for inconsistency; or
8. The order is arbitrary or capricious.

RCW 34.05.570 (3) (a) (b) (c) (d) (e) (f) (h) (j). Any of the above can be

ground for granting relief to the agency order.

Additionally, RCW 34.05.570 provides the court may grant relief if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

The court shall make a separate ruling on each material issue on which the court's decision is based. RCW 34.05.570 (1)(c).

Court may defer to the agency in agency's interpretation of the law, but may substitute its own judgement for that of the agency. *Ludeman v. Department of Health* 89 Wn. App. 751 (1997).

Moreover, an administrative determination will not be accorded deference if the agency's interpretation conflicts with relevant statute. *Department of Labor & Indus. V. Landon*. 117 Wn.2d 122, 127, 814 p.2d 626 (1991).

An agency's interpretation of the statute will not be upheld by a court if it does not reflect a plausible construction of the statutory language or it is contrary to the legislature's intent. *Delagrave v. Employment Sec. Dept.* 127 Wn. APP. 596 (2005).

The courts have a duty to ensure that agencies apply and interpret their regulations consistently with enabling statutes. *Roller v. Dept of Labor and Indus.* 128 Win APP. 922 (2005).

Courts must avoid readings of statutes that result in absurd or

strained consequences. *Glaubach v. Regence Blueshield*, 149 Wn. 2d 827, 833, 74 P.3d 115 (2003).

The appellate court sits in the same position as the superior court and applies the review standards of the Administrative Procedure Act direct to the record. The findings of fact and conclusion of law entered by the superior court generally are superfluous for purposes of review by an appellate court. *Delagrave v. Employment Sec. Dept.* 127 Wn. APP. 596 (2005).

RCW 34.05.566 (7), Agency Record for Review, ALSO specifically provides “the court may require or permit subsequent corrections or additions to the record.” RCW 34.05.566

The court may also receive evidence in addition to that contained in the agency record for judicial review if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues. RCW 34.05.562(1).

IV. ARGUMENT

1. **Plaintiff’s Water System Is Not a Group A Public Water System under the State Law.**

The state law defines “public water system” as:

“Public Water System” means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which

serve residences on the same farm, providing water for human consumption through pipes or other constructed conveyances... RCW 70.119A.020(4)

And

“Public water system” shall mean any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm... “WAC 246-920-020(1)

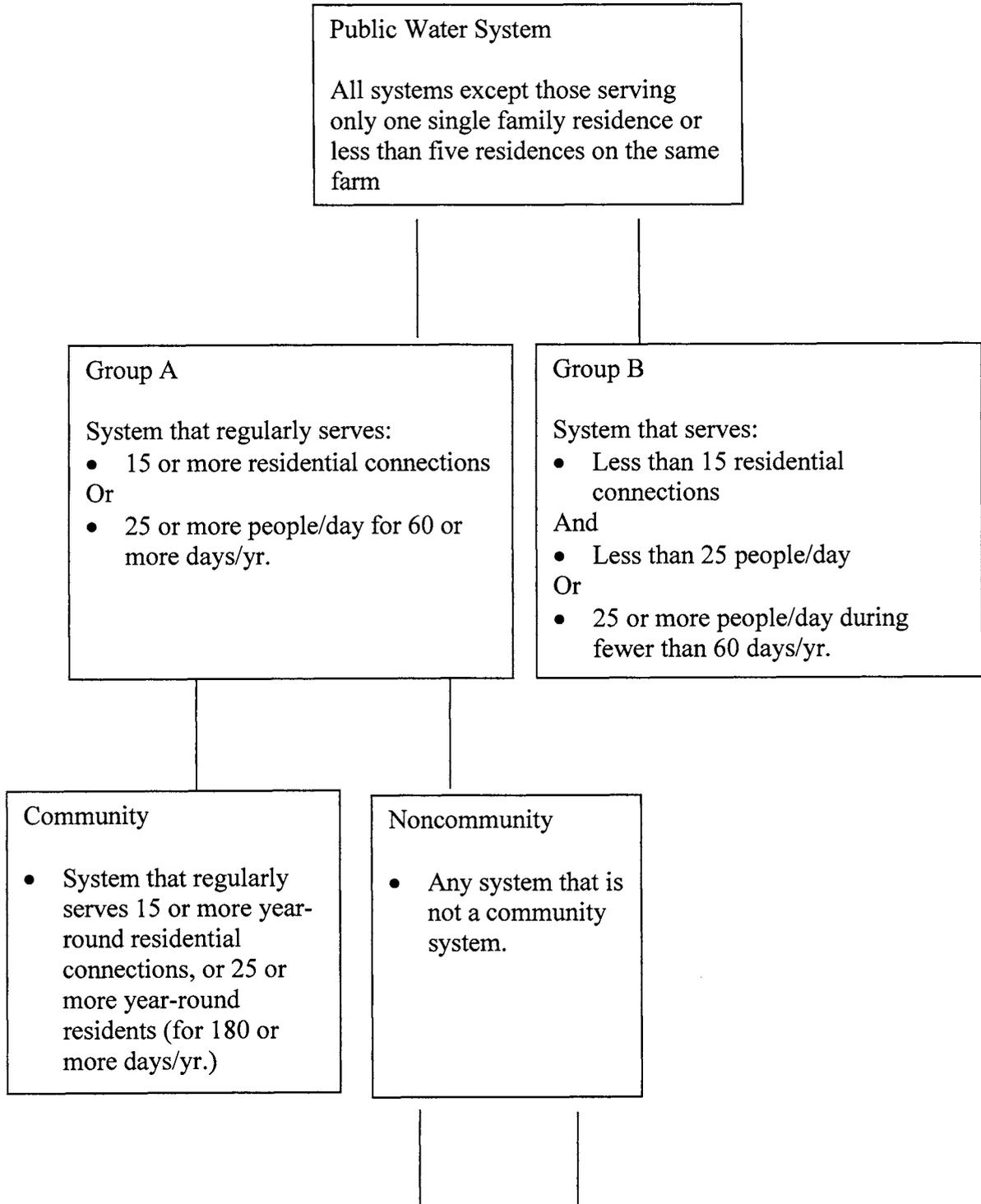
Plaintiff’s water system provides 18 service connections serving approximately 378 to 418 people days per months or approximately 13.5 people per day. As a transient facility, the average 13.5 people a day are primarily transitional nonresidential type of customers.

Under both RCW and WAC, Plaintiff’s water system is undoubtedly a public water system, since the state virtually treats all water systems serving more than one family a public water system.

RCW does not further define public water system. WAC on the other hand for regulation purposes divides Public Water Systems into two categories: Group A and Group B public water systems. WAC 246-920-020 contains a table called Table 1. The table is part of the WAC and it succinctly defines Group A and Group B water systems:

A. Based on WAC Table 1, Plaintiff’s Water System Is not a Group A Public Water System.

Table 1



Nontransient (NTNC)	Transient (TNC)
<ul style="list-style-type: none"> • System that serves 25 or more of the same people/day for 180 or more days/yr. 	<ul style="list-style-type: none"> • System that serves: • 25 or more different people/day during 60 or more days/yr. <p>Or</p> <ul style="list-style-type: none"> • 25 or more of the same people/day for less than 180 days/yr and during more than 59 days/yr. <p>Or</p> <ul style="list-style-type: none"> * 1000 or more people for two, or more, consecutive days.

The WAC table confirms Plaintiff's water system is a Public Water System (see top box of the table), but the Plaintiff's system is not a Group A public water system.

The first box on the left named Group A states: "Group A water system is a system that regularly serves 15 or more residential connections or 25 or more people/day for 60 or more days/yr." Plaintiff's water system does not serve 15 or more residential connections (see WAC 246-290-020 and 40 CFR 141.2 "residential" means year round residents), nor does it serve 25 or more people a day for 60 or more days/yr.

If Plaintiff's water system is not a Group A system, there is no need to go further down the table to find out which type of Group A

system it belongs to. But for the sake of clarification, let's exam each of the boxes and see if the Plaintiff's water system fits into any of the categories of the Group A public water system.

The second box on the left states: "Community water system is a system that regularly serves 15 or more year-round residential connections or 25 or more year-round residents..." Plaintiff's system does not have 15 or more year-round residential connections. It does not serve 25 or more year-round residents either. So Plaintiff's water system is not a Group A Community Water System.

If Plaintiff's water system is not a Community Water System, is it a Noncommunity Water System? The box on the third row named Nocommunity states: "Noncommunity water system is any system that is not a community system." That is to say if a water system is a Group A water system but is not a Group A Community Water System, then it is a Noncommunity Water System. And the system has following two subcategories/ boxes.

The box in the last row on the left side states Nontransient Nocommunity (NTNC) water system is a system that serve 25 or more of the same people/day for 180 or more days/yr." Plaintiff's system does not serve 25 or more of the same people/day for over 180 days/year. Plaintiff's system does not even serve 25 or more of the same people a day

for less than 180 days/yr, which is one of the conditions under the last box named Transient (TNC).

The last box in the last row named Transient (TNC) has two remaining conditions: (1) a system that serves 25 or more different people/day during 60 or more days/yr, (2) a system that serves 1000 or more people for two or more consecutive days. Plaintiff's system does not serve 25 or more different people/day. Plaintiff's water system is incapable of serving 1000 or more people for two or more consecutive days.

Plaintiff's water system clearly is not a Group A public water system since it does not fit into the Group A water system box and it does not fit into any of its subboxes or categories. Plaintiff's water system is a Group B water system since it is precisely what the Group B box says: serves less than 15 residential connections AND less than 25 people/day.

**B. Based on RCW and WAC Clauses and Languages,
Plaintiff's Water System Is not a Group A Water System.**

The Health Department's regional manager, Mr. James, testified during the adjudicative hearing that the WAC Table 1 contains errors. Specifically he claimed that the word "residential" should not be in the Group A Box. It is inserted in error. (AR 467-471 and 500-503). It is a

mistake, a typo. Mr. James made a similar claim in the May 18, 2005 meeting that the state code writers didn't do a good job but didn't explain.

Since Mr. James made such a claim it is necessary to exam the exact language of the WAC to discern its true meaning, and insure both WAC clauses and WAC table are consistent and reach same conclusion.

As is stated earlier, RCW defines "public water system" as:

"Public Water System" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing water for human consumption through pipes or other constructed conveyances... RCW 70.119A.020(4)

WAC 246-290 divides public water system into two categories: Group A and Group B water systems. The Group A water system is:

(4) A Group A system shall be defined as a public water system providing services such that it meets the definition of a public water system provided in the 1996 amendments to the Federal Safe Drinking Water Act (Public Law 104-182, Section 101, subsection b). WAC 246-290-020(4).

WAC 246-290-020(5) further provides:

(5) Group A water system are further defined as community and noncommunity water systems.

(a) Community water system means any Group A water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a

calendar year, regardless of the number of people, or regularly serving at least twenty-five year-round (i.e., more than one hundred eighty days per year) residents. (Underline added).

Example of a community water system might include a municipality, subdivision, mobile home park, apartment complex, college with dormitories...

(b) Noncommunity water system means a Group A water system that is not a community water system. Noncommunity water systems are further defined as:

(i) Nontransient (NTNC) water system that provides service opportunity to twenty-five or more of the same nonresidential people for one hundred eighty or more days within a calendar year. (Underline added)

Examples of a NTNC water system might include a school, daycare center or a business...

(ii) Transient (TNC) water system that services:
(A) Twenty-five or more different people each day for sixty or more days within a calendar year;
(B) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within a calendar year; or
(C) One thousand or more people for two or more consecutive days within a calendar year.

Examples of a TNC water system might include a restaurant, tavern, motel, campground...

(Underlines added). WAC 246-290-020(4) made a reference to the federal law (Federal Safe Drinking Water Act) by stating:

“A Group A system shall be defined as a public water system providing services such that it meets the definition of a public water system provided in the 1996 amendments to the Federal Safe Drinking Water Act (Public Law 104-182, Section 101, subsection b).”

In other words, the State and WAC borrowed federal definition of public water system and used it for Group A public water system under state code and regulations. Federal definition of public water system is the state Group A public water system.

Assuming for the sake of analysis, Plaintiff's water system is a Public Water System under the federal definition, which is not (more analysis on this later), does it fit into any of the categories of the Group A public water system under RCW and WAC? It does not!

Plaintiff's water system is not a Community water system because it does not provide service to fifteen or more service connections used by year-round residents and it does not regularly serve twenty-five or more year-round residents.

Plaintiff's water system is not a nontransient noncommunity (NTNC) water system because it does not provide service opportunity to 25 or more of the same nonresidential people.

Plaintiff's water system is not a transient Noncommunity (TNC) system because it does not provide service to 25 or more of the same people each day; because it does not provide service to 25 or more

different people each day; and because it does not provide service to 1000 or more people anyday.

Regardless one uses WAC texts and clauses for analysis or uses WAC table 1 in WAC 246-290-020 for analysis, one reaches the same conclusion that the Plaintiff's water system is not a Group A public water system.

WAC Table 1 contains no error. The language "residential" or "residential connections" is not an error. The WAC Table 1 and the WAC clauses under section 246-290-020 are consistent. In fact the only difference between the WAC Table 1 and WAC clauses is that Washington policy makers and code writers substituted the word "residential connections" for the long and difficult phrase: "service connections use by year round residents for one hundred and eighty days within a calendar year."

The intent of using "residential" is to make the box smaller and more readable. Had policy makers or code writers used the original long phrase of "year round residents..." in table 1, it would not have made any difference. The Plaintiff's water system would not be a Group A water system because it simply does not provide fifteen or more service connections to year round residents and does not serve 25 or more people a day.

Defendant then points to the WAC Paragraph WAC 246-290-020(4) in which the WAC makes a reference to the federal definition of Public Water System. The defendant argued since WAC 246-290-020(4) made a reference to the definition of federal public water system, WAC basically made the Group A public water system of this state equivalent to the federal public water system. Therefore, regardless of what the state law says, if Plaintiff's water system is a public water system under the federal definition, then it is a group A public water system under the state definition.

Let's now turn to the analysis of federal laws and regulations.

2. Plaintiff's Water System Is Not a Group A Public Water System Under the Federal Law.

Federal definition of the Public Water System is defined in the Federal Safe Drinking Water Act as amended in 1996. It states:

(A) In general. - The term "Public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. (Underline added)."

42 USCS 300f(4)(A).

Code of Federal Regulations 40 CFR 141 defines Public water

system in relevant part as:

A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days of the year.... A public water system is either a "community water system" or a "noncommunity water system."

42 CFR 141.2

Community water system means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Non-community water system means a public water system that is not a community water system. A non-community water system is either a "transient non-community water system (TWS) or a "non-transient non-community water system (NTNCWS)."

40 CFR 141.2

Non-transient non-community water system or NTNCWS means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year.

Transient non-community water system or TWS means a non-community water system that does not regularly serve at least 25 of the same persons over six month per year.

40 CFR 141.2.

At first glance a careless reader may think the federal law considers Plaintiff's water system as a public water system, since it stated the "fifteen service connections" without mentioning "residential connections" or "year-round residents". However, careful reading of entire body of the language of 42 USCS 300f(4) and 40 CFR 141.2 reveals that the federal law does mention "year-round residents" and applies it specifically in the community water system.

Applying 42 USCS 300f(4) and 40 CFR 141.2 as a whole to Plaintiff's water system reaches a definite conclusion that Plaintiff's water system is not a public water system.

Plaintiff's water system is not a public water system under the category of community water system because it does not serve at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. (See the languages under community water system).

Plaintiff's water system is not a public water system under the category of non-transient non-community water system since it does not regularly serve at least 25 of the same person over 6 month per year.

Plaintiff's water system is not a public water system under the category of transient non-community water system since it does not regularly serve at least 25 persons over 6 months per year whether or not

they are same or different persons. (Note the language under transient non-community water system of the 40 CFR 141.2 means “serve at least 25 persons but not same persons” as oppose to “serve at least 25 of the same person” under non-transient non-community system.

Since Plaintiff’s water system is not a public water system under any of the public water system categories, Plaintiff’s water system is not a public water system under the federal rules and regulations or federal law.

Since the law clearly stated a public water system is either a community water system or noncommunity water system and Plaintiff’s water system is neither a community water system nor a noncommunity water system, Plaintiff’s water system is definitely not a public water system by federal standard.

Since Plaintiff’s water system is definitely not a public water system by federal standard, it is not a Group A public water system under the state rules and regulations.

3. Plaintiff’s Water System is a Group B Water System.

Plaintiff’s water system is a Group B system for the following reasons:

- a. WAC 246-291-010 for the Group B Water System defines group B water system as a system:

Constructed to serve less than fifteen residential services regardless of the number of people; or

Constructed to serve an average nonresidential population of less than twenty-five per day for sixty or more days within a year; or

Any number of people for less than sixty days within a calendar year.

(WAC 246-291-010). Plaintiff's water system serves less than fifteen residential services and serves less than an average of twenty-five people per day.

b. Plaintiff's water system fits squarely into the Group B Box in Table 1 of WAC 246-290-020. (See above analysis)

c. Numerous educational or informational materials distributed by the Health department say Plaintiff's water system is a Group B water system. Among all the material, the most widely used and authentic is the Bluebook published October 2003, DOH PUB.

#331-238. It says on page 27:

“You are a Group B water system with a transient population if you provide access to water for less than 25 people per day for at least 60 days per year or for more than 25 people per day for 59 days or less per year and do not primarily serve a residential community.”

Since Plaintiff's water system is a Group B water system under every authority and as defined in all the state distributed advisory

documents as well, it is another proof that the Plaintiff's water system is not a Group A water system.

4. Alleged Violations Did Not Occur.

Plaintiff's water system is not a Group A water system. It is a Group B water system.

Since Plaintiff's water system is not a Group A water system, it is not required to conduct a sanitary survey. Since it is not required to conduct a survey, the alleged sanitary survey violation did not occur.

Starting from December 2005, the health department let its computer automatically print out numerous form letter violations. Ms. Stucky testified during adjudicative hearing that these violations were issued because Plaintiff failed to conduct a sanitary survey and his sampling requirement is increased.

Since plaintiff is not required to conduct a sanitary survey and he has not failed to conduct the survey, his sampling requirement should not be increased. The numerous sampling violations are fictitious.

5. The Department is Negligent, Bureaucratic and Reckless.

Plaintiff was accused for failure to conduct a sanitary survey (inspection) for his water system. Plaintiff did have his water system

inspected, but he was not given a report. When the health department contacted him four years later, he told them the inspection was done, but the department refused to look into it.

Plaintiff later recalled three names and requested a meeting with these people in an effort to find the report, but the request was rejected without explanation. Plaintiff also told the department about the letter he sent out and described to Brian Boye the circumstance under which the inspection happened. Mr. Boye simply told him to prove it and flatly denied he had any conversations with Plaintiff regarding said inspection.

Although the circumstance surrounding the inspection involves two agencies, the department is not hugely inconvenienced to make a phone call to another agency or conduct a little investigation internally, but it refused to do so. At the Plaintiff's repeated requests, the department simply told him "neither the state health department nor the county had any record or evidence for the inspection". The department's handling of this matter is a classical bureaucracy and its attitude is total disregard of its regulatory clients.

Plaintiff complained the matter to the management. However, the management did not give any response whatsoever. Before the Plaintiff started complaining, the department's management was already aware of the problem since the Plaintiff had already sent them multiple letters

requesting reclassification and two employees of the department actively collaborated their efforts to block him. A respectful agency would order such collaboration to stop since such private collaboration in a decision making process in any governmental agency is unlawful and is uncustomary. However the department management not only let it continue, but after the Plaintiff's complaint they acted as if nothing ever happened. They completely ignored his complaint, and then based solely on one employee's false report and without giving Plaintiff any opportunity to explain, the department issued him a violation. The department management's action and their decisions are reckless.

The department's bureaucracy is also reflected in its upper management's handling of the matter. On June 8, 2005, Plaintiff complained to Governor Gregoire. This time the department responded, but the response sidestepped the department's issue. Plaintiff then asked the department to take the matter seriously. In her response, the department director, Ms. Clifford stated: "...we do take your concerns seriously ... and will contact you at the number you provided if I need more information." Ms. Clifford never contacted the Plaintiff. Instead she challenged Plaintiff to prove contrary to the known facts regarding his water system.

Starting from December 2005, the department's regional office set its computer on an automatic crusade to issue monthly violations on the Plaintiff. Whether or not this is retaliation on the Plaintiff's complaint to upper management, it is at least an act of negligence.

Then in April and May of 2006, the department's computer cranked out two new violations on top of the monthly violations, accusing Plaintiff collected no sample at all for each of the previous months.

Plaintiff collected the sample and tested for both months. The department received the both reports from the laboratory, but it lost both of them. The department could at least exercise minimum diligence by making a phone call before sending out threatening violation notices, but again it didn't. It let its computer automatically print out violations without any intervention.

Throughout his dealings with the department, the plaintiff has encountered numerous incidences of bureaucracies. There is one philosophy in the department, that is the department is never wrong. If something does go wrong in the department, Plaintiff has to prove the department's wrong with hard evidence. If he cannot prove it beyond reasonable doubt, it is the Plaintiff's fault. If he proves it, it is still his fault. This philosophy is reflected in Ms. Stucky's comment during adjudicative hearing and in the department's Final Order.

When Plaintiff proved to the department with hard copies of sampling test report from laboratory, Ms. Stucky from the health department responded or rather her reaction is: "well, I suppose you could have called us if you ... collected the sample". And the Adjudicative Officer let the violations stand in the Final Order because Plaintiff did not call the department to tell them they were wrong.

6. The Department Acted in Bad Faith.

Plaintiff's dispute with the department about his water system classification is a bona fide dispute. Plaintiff strongly believes his interpretation of the law is correct.

Despite the dispute, Plaintiff decided to act in good faith and continued to follow the stringent Group A water system regulations including the requirement of one sample every month until the legal issue was resolved. However as he was following the law and just as he saw some hope for a resolution in his correspondence with Ms. Adair, the department's regional office suddenly issued him new violations.

Month after month a computer automatically printed form-letter-violations were sent to the Plaintiff. The department explained later in the adjudicative hearing that due to Plaintiff's failure to schedule a sanitary survey, the department increased Plaintiff's sampling requirement to five

times a month. Therefore, even if Plaintiff is following the requirement, it is now not enough.

The department's regional office knew the classification issue was still under dispute. It also knew Plaintiff complained to the upper management, it suddenly started issuing new violations and derailed the good cause. (Ms. Adair mysteriously disappeared after the new violations piled on). The department's actions, if not retaliatory, are certainly not good faith actions.

Further, the department increased Plaintiff's sampling requirement and issued new violations without any notice to the Plaintiff. The department claimed in the adjudicative hearing that they did give notice, but the only evidence they offered is a "Notice within Notice". Specifically, in the Notice of Violation the department issued to Plaintiff in March 2005 and on the second page there is a warning. It says: "in the event you failed to complete...sanitary survey, DOH requires that you monitor for coliform bacteria (sampling) at least five times per month." (AR 256-259 and 380-385).

Health department traditionally sent out multiple notices when a new requirement is out. This is evidenced by the many computer generated form letters about new rules in the making or new requirements. This notice on the other hand is a Notice within Notice and the warning,

which they called “notice”, appears in the middle of the second page of a double sided document. This is way out of the norm of the department’s customary practice and is hardly a well-intended notice. The issuance of numerous violations based on this type of excuse and at a time when Plaintiff had just started a good communication with the upper management is nothing but a bad faith.

Even the department’s first Notice of Violation to Plaintiff on the sanitary survey is not as innocent as the department claimed. The department claimed its issuance of the first Notice of Violation on March 11, 2005 is based on the second five year period. (AR 448-449). Specifically, Group A water systems are required to do a sanitary survey every five years and the Plaintiff failed to schedule the second one.

According to Plaintiff’s record, Plaintiff first received a notice of sanitary survey in May of 2000. According to the department’s record, the department first sent him an informational letter in June of 1999. Whether based on the department’s record or on the Plaintiff’s record, at the time the first Notice of Violation was issued on March 11, 2005, Plaintiff had just entered or not yet entered the second five-year period.

Further, according to Bob James, the regional manager of the department: “the program had a short history. “Some purveyor complied quickly, some didn’t, and there were delays.” If there were delays, the

second five-year period would be pushed back further and Plaintiff could not have failed to conduct the second survey when the second five year period has not yet started. The Department's issuance of a violation for second survey when it has not yet started or just started is completely arbitrary and is hardly an act of good faith.

7. The Department's Conduct Unlawful and its Application of Law Selective.

In November 2004, when the Plaintiff discovered the department's error and requested reclassification of his water system, two employees from the department banded together in an effort to block it. Plaintiff sent the department request letters on November 22, 2004 and December 1, 2004, the department did not respond. Instead Mr. Boye and Ms Quinn called him and those calls came in shortly one after another for two days.

Mr. Boye filed a report later. In that report he falsely stated that the department did not receive the Plaintiff's requests. In this report he also suggested Plaintiff's water system was not inspected and there is no basis to classify Plaintiff's water system into Group B.

Mr. Boye wrote his report on December 6, 2004. According to the department's own records, the department had received multiple requests from the Plaintiff by then. The first request was received on November 24, 2004; the second on December 2, 2004. Mr. Boye's own phone

message to the Plaintiff also indicated the department had already received the Plaintiff's requests and he had also known the contents of the requests.

Mr. Boye manipulated the events during these two months surrounding the issue of classification and then went extra length to file a false report. Mr. Boye violated the state statute RCW 42.20.040. Mr. Boye's conduct is unlawful and his conduct caused irreparable damage to the Plaintiff. State law also mandates all public employees execute laws faithfully. Mr. Boye and Shasta Quinn's private collaborations to block Plaintiff's requests for classification violated this statute on its face.

Classification of a water system is Shasta Quinn's job. It should have nothing to do with Brian Boye. The collaboration between the two in their joint decision to classify Plaintiff's water system in Group A is unlawful and is inconsistent with the department standard decision making procedure, and the department has not offered any explanation to this inconsistency.

Mr. Boye informed Plaintiff in one of his phone conversations that his water system is classified as Group A because it serves more people than a Group B system and this is always what the Plaintiff understood the reason of his system being classified as Group A. However when Plaintiff told the department its error on the basis of the number of people served, the department came up with the new argument: "15-connections". This

new “15-connections” insured the Plaintiff’s water system stayed within Group A system and gave the department an excuse for its actions.

Later when Plaintiff pointed out that the “15 connection” argument is incorrect. WAC means “15 residential connection”, the department then claimed the WAC writers didn’t do a good job. The word “residential” is an error, a typo. (AR 467-471 and 500-503). When the Plaintiff told them the word is not an error because it is consistent with the other WAC language “year round residents”, the department then pointed to the federal language. The department kept changing its use of law and selectively applied the law.

In reading the law, full effect must be given to the legislature’s language, with no part rendered meaningless or superfluous. (*Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Deleting the language “residential connections” in the rule or freely rendering effect or no effect to the language, the department exceeded its statutory authority. The department in all actuality is creating new rules without going through statutory required rule-making procedures. The department’s application of the law in this case was unfaithful and unlawful.

The county health officials’ conducts were also troubling. Particularly troubling was the “August 18 2003 letter” from the County

Health Department to Plaintiff. Based on the comments made by Ingrid Salmon in her June 6, 2005 email and the comments by Brian Boye in his February 11, 2004 letter, if the August 18, 2003 letter was actually written and sent to the Plaintiff on August 18, 2003, it should have been included in the May 23 2005 package mailing by the health department. This letter also was allegedly "sent" carbon copy to Brian Boye. If Brian Boye received a copy in August 2003, it would also have been included in the May 23, 2005 mailing and Mr. Boye wouldn't have made the comments: "... apparently this did not occur."

Clearly no letter was written and sent to the Plaintiff during the entire four years between year 2000 and year 2004 from the county health department, asking Plaintiff to conduct inspection. The county health department's extraordinary effort to create a letter and falsely claim it sent it to the Plaintiff whereas actually it didn't is an indication that the county has the knowledge that the inspection was done. The county's conduct is unlawful.

8. Department's Actions Violated the Due Process and Equal Protection Clauses.

Plaintiff made numerous requests and complained about the department's handling of this case. On December 13, 2004, Plaintiff made his first complaint to the management. This complaint was never

responded. On March 29, 2005, Plaintiff requested a hearing. The hearing was told not available. On July 10, 2005 the Plaintiff suggested to discuss the evidence with the department. On August 28, 2005 he suggested to the department to have court adjudicate a decision on the issue of the law. On February 7, 2006 Plaintiff pleaded once again to have a meeting with the management and a separate meeting with the department's legal advisor for the issue of the law. On July 3, 2006, after he made his mind to go to the court on this issue, Plaintiff asked again if the department is willing to discuss the law with him (the letter was returned).

However, Plaintiff's legitimate requests were either completely ignored or sidestepped. The Plaintiff's request for clarification of the law or discussion was within his right. Further Washington Administrative Code provides for an administrative review for issues like this. The health department never advised Plaintiff the availability of such a process despite the Plaintiff's repeated cry for foul play. The department simply resorted to issuing numerous violations and penalties to coerce him.

Also despite the legal requirement of adjudicative hearing, the health department gave only a superficial hearing. During the prehearing conference the department's adjudicative officer excluded three critical witnesses. Even though these witnesses can provide material facts to the

decision making process in the department relating to the issuance of department's violations to Plaintiff, they were ruled to be irrelevant.

The adjudicative officer ruled they were irrelevant because Plaintiff was trying to show the department's wrongdoings. During the prehearing, the adjudicative officer also held that the hearing would be focused on Plaintiff's violations (2.1, 2.2, 2.3, 2.4 in the department's order) or lack of. Any evidence or witnesses intent to show department's negligence are likely to be objected by the department's counsel and he would make rulings as it goes.

The ruling effectively denied Plaintiff's right for a fair hearing. It accorded adjudicative hearing a formality but no substance. As a result of these rulings, Plaintiff cancelled all the witnesses and submitted only evidences that show Plaintiff had a bona fide dispute with the department and that he was not ignoring them. Many of the excluded evidences relate to the department's negligence and these negligences are material facts that show the departments decisions arbitrary and capricious. Without these evidences or with the department's wrongdoing out of touch, Plaintiff cannot show the department's actions arbitrary, or its orders inconsistent with rules and procedures.

The department's repeated denial of Plaintiff's requests and its resort to issuance of numerous coercive violations and its failure to accord

Plaintiff a true and substantive adjudicative hearing violated Plaintiff's Due Process and Equal Protection rights under the Fourteenth Amendment of the United States Constitution. The department's actions and final order substantially prejudiced Plaintiff.

V. CONCLUSION

The Health Department misinterpreted and erroneously applied the law in regards to the classification of the Plaintiff's water system. The department's issuance of violations and penalties are baseless. Further, the department's actions are reckless and coercive. The department's decision processes are selective, manipulative and unlawful; its decisions and orders are arbitrary and capricious. The department's actions and Final Order flatly violated Plaintiff's constitutional rights on its face.

Plaintiff therefore respectfully request that the Health Department's Final Order and the Superior Court's Verbal Ruling and Order be reversed and the civil penalty removed.

Dated this 10th day of April, 2008


Jiangong Lei, Appellant
Victory Motel