

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

August 22, 2005

Opinion No. 05-128

Regulation of Public Water Systems Under the Safe Drinking Water Act

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**QUESTIONS**

1. Is it possible for twenty-five or more individuals with property rights to a single spring or other water source to maintain fifteen or more independent, individual water line connections to their respective residences from that source and remain outside the jurisdiction of the Safe Drinking Water Act, Tenn. Code Ann. §§ 68-221-701 to 68-221-720?

2. If the answer to question 1 is no, does the Tennessee Safe Drinking Water Act unconstitutionally impair individual and/or collective property rights to access a single surface or ground water source if the purpose is for individual consumption and if the connections to the water source are completely independent and individually maintained?

3. If twenty-five or more individuals do have the legal right to maintain fifteen or more independent water line connections to a single community water source without being subject to the Safe Drinking Water Act, is there any other environmental law that affects the right of individuals to pipe and consume water from a single spring or other water source in which they own a property interest?

**OPINIONS**

1. If the single water source is a spring, it is our understanding that the fifteen-plus individual water line connections would require a spring box or some other central collection mechanism for capturing the water. As to any other single water source, we are unaware of any means by which the water could be withdrawn to supply multiple connections without the water first being captured through some form of central collection system. Because the fifteen-plus water line connections would be interconnected through the central collection mechanism, it is the opinion of this Office that this would constitute a "public water system" subject to regulation under the Safe Drinking Water Act.

2. It is the opinion of this Office that the Safe Drinking Water Act does not unconstitutionally impair any individual and/or collective property rights regarding access to surface or ground water. The Act's reach is a proper exercise of the state's police powers to protect the health, safety and welfare of the public, insofar as it does not eliminate all economic use for the

affected property.

3. In light of our response to question 1, the answer to this question is pretermitted.

### ANALYSIS

Tennessee's Safe Drinking Water Act, Tenn. Code Ann. §§ 68-221-701 to 68-221-720 (SDWA), provides a comprehensive and federally authorized regulatory program for the provision of an adequate quantity and quality of safe drinking water in this state. In accordance with Tenn. Code Ann. § 68-221-706, the Tennessee Department of Environment and Conservation (TDEC) is authorized to exercise general supervision over the construction of public water systems throughout the state. Your request concerns the scope of that authority and its interface with private property rights.

The SDWA defines a "public water system" as follows:

. . . a *system* for the provision of water for human consumption through pipes *or other constructed conveyances*, if such serves fifteen (15) or more connections or which regularly serves twenty-five (25) or more individuals daily at least sixty (60) days out of the year. A public water system includes:

- (i) Any collection, treatment, storage or distribution facility under control of the operator of such system and used primarily in connection with such system; and
- (ii) Any collection or pretreatment storage facility not under such control which is used primarily in connection with such system.

Tenn. Code Ann. § 68-221-703(19)(A) (emphasis supplied).

Neither the SDWA nor the regulations thereunder supplies a special definition for the term "system." Therefore, the common understanding of the word must control, and we must apply a reasonable construction in light of the purposes and objectives of the Act. *Imperial Irrigation District v. United States Environmental Protection Agency*, 4 F.3d 774, 776 (9th Cir. 1993); *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995). The word "system" is defined as "a complex whole; a set of things working together as a mechanism or interconnecting network." Concise Oxford Dictionary 1453 (10th ed. 1999).

You have specifically inquired about a situation where there are fifteen or more water line connections from a single spring to the homes of twenty-five or more individuals, all of whom claim

to have property rights to that spring. Your hypothetical further states that each physical connection from that water source is completely independent and individually maintained. But the request does not indicate whether there is any central means of collection and treatment or any common pipe or delivery system for these fifteen-plus connections. If the water source is a spring, it is our understanding that these connections would likely require a spring box or some central collection mechanism for capturing the water. In that event, the fifteen-plus connections would be interconnected by a common physical control or “other constructed conveyance.” Under this set of circumstances, it is the opinion of this Office that such water line connections would constitute a “public water system” within the meaning of the SDWA and would be subject to regulation under the Act.

Although the SDWA would likely govern the water line connections posited in your request, we do not believe that the Act unconstitutionally impairs any property rights of the affected owners. Here, the Act’s regulatory scope would take precedence over such property rights. The General Assembly has provided the following statement of policy and purpose in the SDWA:

Recognizing that the waters of the state are the property of the state and are held in public trust for the benefit of its citizens, it is declared that the people of the state are beneficiaries of this trust and have a right to both an adequate quantity and quality of drinking water.

Tenn. Code Ann. § 68-221-702. This evinces a recognition that the SDWA is a proper exercise of the sovereign’s police powers to protect the health, safety and welfare of the public. Since one of the primary purposes of the SDWA is to assure a safe supply of water to the public, any consequent impact on property rights to access surface or ground water will be viewed as de minimis, unless the regulation can be shown to deny all economically beneficial or productive use of the land. *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886, 2899 (1992). This is consistent with the notion of “reciprocity of advantage” recognized by the United States Supreme Court in cases in which the state asserts its power to enjoin uses of property that are tantamount to public nuisances. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S.Ct. 158, 160 (1922). As the Court explained in *Keystone Bituminous Coal Association v. DeBenedictis*, 480 U.S. 470, 107 S.Ct. 1232, 1245 (1987):

Under our system of government, one of the State’s primary ways of preserving the public weal is restricting the uses individuals can make of their property. While each of us is burdened somewhat by such restrictions, we, in turn, benefit greatly from the restrictions that are placed on others.

For these reasons, we believe that the SDWA takes priority over the individually maintained water line connections in your request and it does not unconstitutionally impair any individual and/or collective property rights regarding access to surface or ground water.

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