



Control Number: 44211



Item Number: 13

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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PUBLIC UTILITY COMMISSION
FILING CLERK

**IN THE MATTER OF
AN ENFORCEMENT ACTION
CONCERNING MICHAEL LANTZ
O'NEILL D/B/A FRONTIER PARK
RESORT AND MARINA;
RN101278034**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

2011 AUG 19 AM 9:17
CHIEF CLERK'S OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**ORDER MODIFYING EMERGENCY ORDER
DOCKET NO. 2013-1429-UCR-E**

On September 4, 2013, the Texas Commission on Environmental Quality ("TCEQ" or "Commission") considered whether to affirm, modify, or set aside an Emergency Order in the matter regarding Michael Lantz O'Neill d/b/a Frontier Park Resort and Marina ("Mr. O'Neill"). The Emergency Order was issued by the Executive Director without a hearing on August 1, 2013. The Emergency Order and the notice of the September 4, 2013, agenda hearing to affirm, modify, or set aside the Emergency Order were sent by certified mail return receipt requested, and sent by first class mail, postage prepaid to the last known address of Mr. O'Neill on August 6, 2013. The Emergency Order was also hand delivered to Mr. O'Neill on August 6, 2013. The Commission finds that the Executive Director appropriately issued the Emergency Order and that the requirements for an emergency order found in Chapters 5 and 13 of the Texas Water Code have been satisfied.

**THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ORDERS THAT:**

The August 1, 2013, Emergency Order, attached hereto as Exhibit A and incorporated into this Order by reference, is affirmed with the following modification:

1. In order to correct a typographical error, Order, Paragraph No. 3 shall be changed to replace "January 17, 2014" with "January 28, 2014."

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

**TCEQ DOCKET NO. 2013-1429-UCR-E**

**IN THE MATTER OF
AN ENFORCEMENT ACTION AGAINST
MICHAEL LANTZ O'NEILL D/B/A
FRONTIER PARK RESORT AND
MARINA;
RN101278034;
CCN12689**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**EMERGENCY ORDER
APPOINTING A TEMPORARY MANAGER
OF A WATER UTILITY**

On August 1, 2013, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is Michael Lantz O'Neill d/b/a Frontier Park Resort & Marina ("Mr. O'Neill").

**I.
FINDINGS OF FACT**

1. Mr. O'Neill owns a public water system located at Ranch Road 1 Box 1690, Hemphill, Sabine County, Texas (the "Utility").
2. The Utility provides potable water service for compensation to approximately 20 community and 89 non-community service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
3. The Utility operates pursuant to Certificate of Convenience and Necessity No. 12689.
4. The TCEQ alleges that the Utility has discontinued the provision of service and necessary repairs to ensure continuous and adequate water service ("Exhibits A and B").
5. Commission records show that the mailing address for Mr. O'Neill is 360 Frontier Drive, Hemphill, Texas 75948.
6. No other source of water is available to the more than 60 people whose water is supplied by the Utility.

7. During an inspection of the Utility conducted on August 29, 2009, a Beaumont Regional investigator documented that Mr. O'Neill violated numerous requirements. The case was referred to the Office of Attorney General on March 17, 2010. On December 20, 2010, the 353rd Judicial District Court in Travis County issued a Default Judgment and Permanent Injunction ("Default Judgment") against Mr. O'Neill. The violations are listed in the Default Judgment attached as Exhibit C.
8. On February 28, 2011, a TCEQ Beaumont Regional investigator documented that Mr. O'Neill was not in compliance with the Default Judgment.
9. On April 16, 2013, the TCEQ referred the case back to the Office of Attorney General to pursue contempt and abstract of judgment for the Default Judgment.
10. On July 26, 2013, the Executive Director signed an Emergency Order appointing Mr. John Broughton as temporary manager of the Utility based upon a TCEQ investigation conducted on July 25, 2013 wherein the investigator was told by Mr. O'Neill that the customers of the Utility had not had water service since July 16, 2013. Since then, Mr. Broughton has informed the TCEQ that he no longer wishes to serve in the capacity of a temporary manager and that the TCEQ should obtain a replacement.
11. A potential health hazard exists as a result of the Utility's failure to provide continuous and adequate service. Immediate repairs on the Utility are necessary to ensure the quality of the water in the State and to ensure the Utility operates in a safe manner and meets requirements in the Texas Water Code, the Texas Health and Safety Code, and TCEQ rules. Therefore, another temporary manager should be appointed to resume operations of the Utility to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health and Safety Code, and is safe for public use and consumption.
12. Sabine River Authority of Texas ("SRA") has agreed to serve as temporary manager of the Utility, and its mailing address is P.O. Box 579, Orange, TX 77631-0579. SRA's telephone number is (409)746-2192.
13. This Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.

II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1, 2, and 3, Mr. O'Neill owns a retail

public utility as defined in TEX. WATER CODE § 13.002(19).

2. Findings of Fact Nos. 4, 6, 7, 8 and 10 show that the Utility has abandoned operations and that the appointment of a new temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132, and 30 TEX. ADMIN. CODE § 291.142(c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued service or abandoned operations or the provision of services or has been or is being referred to the Attorney General for the appointment of a receiver under TEX. WATER CODE § 13.412.
4. TEX. WATER CODE § 5.507 provides that the Commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.
5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
6. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN. CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
7. TEX. WATER CODE §§ 5.501 and 5.507 and 30 TEX. ADMIN. CODE § 291.143(a) authorize the Executive Director to appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations or which is being referred to the office of the Attorney General for the appointment of a receiver.
8. TEX. WATER CODE § 13.4132 provides to the temporary manager the powers and duties necessary to ensure continued operation of the utility and the provision of continuous and adequate services to customers including the power and duty to read meters, bill for services, collect revenues, disburse funds, access all system components, and request rate increases.
9. Notice of the emergency order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Utility's headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address of Mr. O'Neill is set forth in Finding of Fact No. 5.

III. ORDER

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, August 1, 2013.
2. Immediately upon the effective date of this Emergency Order, the Sabine

River Authority of Texas is hereby appointed to temporarily manage and operate the Utility.

3. The Sabine River Authority of Texas shall serve as temporary manager until such time as a receiver is appointed to operate the Utility by a court of proper jurisdiction, or 180 days after the effective date of this Order, January 28, 2014~~January 17, 2014~~, whichever occurs first.
4. The Sabine River Authority of Texas is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.
5. The Sabine River Authority of Texas shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Order.
6. The Sabine River Authority of Texas' requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
7. The Sabine River Authority of Texas compensation will come from Utility revenues in the amount of fifteen dollars (\$15.00) per month per connection.
8. The Sabine River Authority of Texas shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Order at its regular Agenda meeting on September 4, 2013, at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the September 4, 2013, Agenda meeting, Mr. O'Neill may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order. An Administrative Law Judge will be present at the Agenda to immediately hear the matter should a hearing be requested.**
10. The Chief Clerk shall provide a copy of this Order to each of the parties.

Richard A. Hyde, P.E
Deputy Executive Director

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 1, 2013

Via Hand Delivery
Via Certified Mail Return Receipt Requested
Article No. 7002 0860 0004 6476 5485
Via First Class Mail, Postage Pre-Paid

Mr. Michael Lantz O'Neill
360 Frontier Drive
Hemphill, Texas 75948

Re: Michael Lantz O'Neill d/b/a Frontier Park Resort and Marina
Docket Nos. 2013-1429-UCR-E and 2013-1405-UCR-E
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Mr. O'Neill:

On August 1, 2013, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued two Emergency Orders pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, 291 and 305. The party made the subject to this order is Michael Lantz O'Neill d/b/a Frontier Park Resort and Marina. The Emergency Orders appointed the Sabine River Authority of Texas ("SRA") as temporary manager of the public water system and wastewater treatment system located off Ranch Road 1, Box 1690, Hemphill, Sabine County, Texas.

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Orders issued on August 1, 2013. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on **September 4, 2013**. The Agenda begins at **9:30 a.m.** and will be held at **TCEQ Park 35 Complex, 12118 North IH-35, Building E, Room 201 S, Austin, Texas**. A copy of the record of the materials which have been submitted to the Chief Clerk's Office and will be used in the Texas Commission on Environmental Quality Agenda process will be provided to you at a later time.

Mr. Michael Lantz O'Neill
August 1, 2013
Page 2

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), **you may request at the time of the Agenda an evidentiary hearing on issuance of the Emergency Orders.** An Administrative Law Judge will be available to conduct a hearing at Agenda on September 4, 2013, should you so request. Should you have any questions, please contact Ms. Stephanie Frazee, Staff Attorney in the TCEQ Litigation Division at (512) 239-0600.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen C. Decker', with a stylized flourish at the end.

Kathleen C. Decker, Director
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Enclosure

cc: Mr. Ronald Hebert, Water Section Manager, Beaumont Regional Office
Mr. Terence Webb, Receivership Coordinator
Mr. Blas Coy, Office of Public Interest Counsel
Sabine River Authority of Texas, P. O. Box 579, Orange, TX 77631-0579

2013 AUG -1 AM 11: 57

CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2013-1429-UCR-E

**IN THE MATTER OF
AN ENFORCEMENT ACTION AGAINST
MICHAEL LANTZ O'NEILL D/B/A
FRONTIER PARK RESORT AND
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**I.
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1. Mr. O'Neill owns a public water system located at Ranch Road 1 Box 1690, Hemphill, Sabine County, Texas (the "Utility").
2. The Utility provides potable water service for compensation to approximately 20 community and 89 non-community service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
3. The Utility operates pursuant to Certificate of Convenience and Necessity No. 12689.
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II. CONCLUSIONS OF LAW

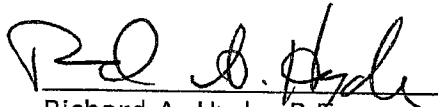
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2. Findings of Fact Nos. 4, 6, 7, 8 and 10 show that the Utility has abandoned operations and that the appointment of a new temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132, and 30 TEX. ADMIN. CODE § 291.142(c).
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**III.
ORDER**

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2. Immediately upon the effective date of this Emergency Order, the Sabine River Authority of Texas is hereby appointed to temporarily manage and operate the Utility.
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10. The Chief Clerk shall provide a copy of this Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

A handwritten signature in black ink, appearing to read "Richard A. Hyde", is written over a horizontal line.

Richard A. Hyde, P.E.
Deputy Executive Director

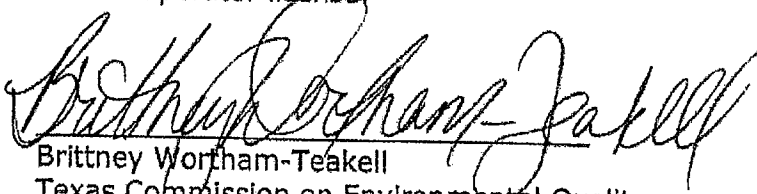
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AFFIDAVIT OF BRITTNEY WORTHAM-TEAKELL

STATE OF TEXAS §
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COUNTY OF SABINE §

My name is Brittney Wortham-Teakell. I am an environmental investigator for the Beaumont Regional office of the Texas Commission on Environmental Quality. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

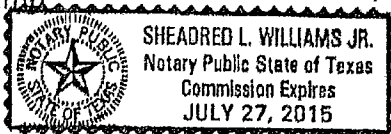
On July 25, 2013, I spoke with Michael O'Neill, owner and operator of Frontier Park and Marina (the "Utility"). Mr. O'Neill stated that due to extreme weather conditions which occurred on July 15, 2013, the Utility has been out of water. On July 25, 2013, I arrived at the Utility and observed that water service was unavailable for all areas of the Utility. While discussing the Utility with Mr. O'Neill, he stated that he would like to not be the operator for the Utility any longer and would like to ultimately "get rid" of the Utility. He stated he would like to be dissolved of all responsibility concerning the Utility. Mr. O'Neill stated that due to the condition of the plant and distribution system, it is difficult to manage and keep in good working condition for extended periods of time. Mr. O'Neill also stated that he has not made an attempt to attain a water operator license.


Brittney Wortham-Teakell
Texas Commission on Environmental Quality

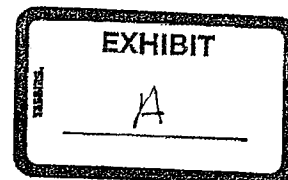
Before me, the undersigned authority, on this day personally appeared Brittney Wortham-Teakell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 26th day of July, A.D., 2013.

Notary Stamp




Notary Signature





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