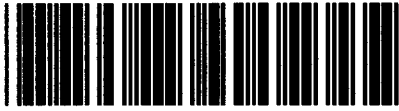




Control Number: 44211



Item Number: 21

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
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

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PUBLIC UTILITY COMMISSION  
FILING CLERK

# EXHIBIT A

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

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

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TCEQ OFFICE

2014 JAN 27 AM 11:38

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**EMERGENCY ORDER  
RENEWING THE APPOINTMENT OF A TEMPORARY MANAGER  
OF A WASTEWATER UTILITY**

On January 27, 2014, 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, 13, and 26, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 291, and 305. 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 wastewater system located 6 miles east of Milam in Carrice Creek, Sabine County, Texas (the "Sewer Utility").
2. The Sewer Utility provides wastewater treatment service to approximately 38 full-time residences as well as rental units, a store, and a restaurant. Mr. O'Neill charges each residence \$55.66 per month for water, wastewater, and trash services. As such, the Sewer Utility is a sewer utility as defined in 30 TEX. ADMIN. CODE § 291.3(52).
3. The Sewer Utility's wastewater permit, TCEQ Permit No. WQ00114015001, expired on November 1, 2010. The Sewer Utility does not have a current wastewater discharge permit, and the Sewer Utility has never had a Certificate of Convenience and Necessity.
4. The TCEQ alleges that the Sewer Utility failed to provide appropriate wastewater treatment so that a potential health hazard has resulted and failed to adequately maintain facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated interruptions. (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 wastewater services are available to the more than 60 people who are served by the Sewer Utility.

7. During an inspection of the Sewer 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 353<sup>rd</sup> 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 May 30, 2013, a TCEQ Beaumont Regional investigator documented that the Sewer Utility was continuing to discharge untreated wastewater into Toledo Bend Reservoir. Specifically, the water level in the chlorine contact chamber was approximately 2 inches above the crest of the 90-degree v-notch weir, with an estimated flow of 0.018 million gallons per day. Samples taken in the chlorine contact chamber showed that the total chlorine residual concentration was 0.01 mg/L; the pH was 7.42 SU; the dissolved oxygen concentration was 6.09 mg/L; and fecal coliform was 50,000 colonies per 100 mL.
11. On July 29, 2013, a TCEQ Beaumont Regional investigator documented that the Sewer Utility was continuing to discharge untreated wastewater into Toledo Bend Reservoir and that the facility was failing to provide appropriate wastewater treatment and failing to adequately maintain facilities resulting in potential health hazards. (Exhibits A and B). Specifically, the lift station pump was running but was not pumping any wastewater out of the lift station. (Exhibits A and B). The lift station had approximately 2 feet of capacity before overflowing. (Exhibits A and B). Wet areas around the lift station and down slope of the lift station indicated a recent overflow. (Exhibits A and B). Additionally, the clarifier contained high amounts of bulking sludge and an excessive sludge blanket. (Exhibits A and B). The clarifier has a depth of 10 inches, and the sludge blanket was 9 inches deep. (Exhibits A and B). Chlorine was not being added to the effluent, and the chlorine contact basin had sustained severe corrosion. (Exhibits A and B). The effluent at the Sewer Utility was dark brown and thick. (Exhibits A and B). The final basin contained bulking sludge, which was being discharged into Toledo Bend reservoir. (Exhibits A and B). Samples were taken just below the v-notch weir at the point of discharge. (Exhibits A and B). Finally, the chlorine pump was not functional. (Exhibits A and B). The following violations were documented:

- a. 30 TEX. ADMIN. CODE § 305.125 and TCEQ Default Order, Docket No. 2007-0449-MLM-E, Ordering Provision No. 2.b.ii., by failing to submit a revised September 2006 Discharge Monitoring Report ("DMR") that reflected the correct pH data for that reporting period. (Default Judgment Violation No. 24.) A review of the integrated Compliance Information System showed that the data had not been submitted.
  - b. 30 TEX. ADMIN. CODE § 305.125(4) and TCEQ Default Order, Docket No. 2007-0049-MLM-E, Ordering Provision No. 2.c., by failing to develop and implement operational and maintenance procedures to prevent future discharges from the lift stations at the Sewer Utility. (Default Judgment Violation No. 25.)
  - c. 30 TEX. ADMIN. CODE § 30.331(b), TEX. WATER CODE §§ 26.0301 and 37.003, and TCEQ Default Order, Docket No. 2007-0449-MLM-E, Ordering Provision No. 2.d., by failing to hire a licensed wastewater operator and/or complete training and licensing requirements to become a licensed wastewater operator. (Default Judgment Violation No. 26.)
  - d. 30 TEX. ADMIN. CODE § 305.125(1) and Permit No. WQ00114015001, by failing to adjust the feed rate of chlorine tablets to ensure that the total chlorine residual is maintained between 1.0 and 4.0 mg/L. (Default Judgment Violation No. 28.)
  - e. 30 TEX. ADMIN. CODE § 305.125(5) and Permit No. WQ00114015001, by failing to provide duplex pumping capability at the collection lift station. (Default Judgment Violation No. 30.)
  - f. 30 TEX. ADMIN. CODE § 305.125(5) and Permit No. WQ00114015001, by failing to provide high water alarm systems at the collection lift station and the influent lift station. (Default Judgment Violation No. 31.)
  - g. TEX. WATER CODE § 26.121(a)(1), by failing to have a wastewater discharge permit.
  - h. 30 TEX. ADMIN. CODE § 305.125(5), by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
  - i. TEX. WATER CODE § 26.039, by failing to notify the Commission of an accidental discharge or spill within 24 hours after the occurrence.
12. A potential health hazard exists as a result of the Sewer Utility's failure to provide continuous and adequate wastewater treatment. (Exhibit A). The Sewer Utility is overflowing at the lift station and discharging untreated

wastewater into Toledo Bend reservoir. Immediate repairs on the Sewer Utility are necessary to ensure abatement of the threats to human health and water quality and to ensure the Sewer Utility operates in a safe manner and meets requirements in the Texas Water Code, the Texas Health and Safety Code, and TCEQ rules. Sabine River Authority is currently serving as the temporary manager of the Sewer Utility through an Emergency Order issued on August 1, 2013. A temporary manager is necessary to continue operations of the Sewer 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.

13. The Sabine River Authority of Texas has agreed to serve as temporary manager of the Sewer Utility for an additional 180 days. The Sabine River Authority of Texas' mailing address is P.O. Box 579, Orange, Texas 77631-0579 and phone number is (409) 746-2192.
14. This Order is necessary to ensure that continuous and adequate wastewater service is provided to the Sewer Utility's customers to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.
15. This matter has been referred to the Office of Attorney General so that a petition may be filed to appoint a receiver under TEX. WATER CODE § 13.412 to guarantee continuous and adequate service to customers of the Sewer Utility.

## **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. As evidenced by Finding of Fact No. 2, the Sewer Utility is providing retail sewer utility service as defined in TEX. WATER CODE § 13.002(20).
3. A utility cannot provide sewer utility service without first obtaining a certificate of convenience and necessity ("CCN") from the TCEQ. TEX. WATER CODE § 13.242. A utility cannot charge rates without first obtaining the approval of the rates by the TCEQ. TEX. WATER CODE § 13.135 and Chapter 13, Subchapter F.
4. Findings of Fact Nos. 4 and 6 through 12 show that the Sewer Utility has abandoned operations and that the appointment of a temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(c).
5. 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.

6. 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.
7. 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.
8. TEX. WATER CODE §§ 5.501(c) and 5.505 and 30 TEX. ADMIN CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
9. 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.
10. 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.
11. 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 Sewer 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.

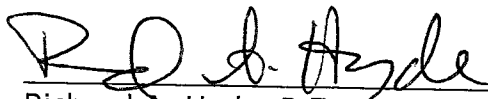
### **III. ORDER**

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, January 27, 2014.
2. Immediately upon the effective date of this Emergency Order, Sabine River Authority is hereby appointed to temporarily manage and operate the Sewer Utility.
3. The Sabine River Authority of Texas shall serve as temporary manager until such time as a receiver is appointed to operate the Sewer Utility by a court of proper jurisdiction, or 180 days after the effective date of this Order, July 26,

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 Sewer 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 Sewer 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 Sewer Utility revenues in the amount of fifteen dollars (\$15.00) per month per customer.
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 February 26, 2014, at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the February 26, 2014, 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.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Richard A. Hyde, P.E.  
Executive Director



## AFFIDAVIT OF RONALD HEBERT

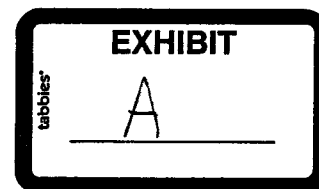
STATE OF TEXAS           §  
                                  §  
COUNTY OF SABINE       §

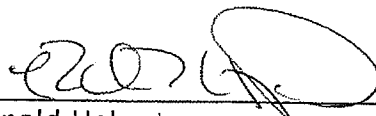
My name is Ronald Hebert. I am the Water Section Manager for the Beaumont Regional Office of the Texas Commission on Environmental Quality. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On July 29, 2013, I conducted an investigation of the Frontier Park Wastewater Collection System and Wastewater Treatment Plant. During the investigation, it was noted that the collection system lift station had one functional pump which was running but was not pumping sewage from the lift station. The lift station had a remaining capacity of 2 feet before it would overflow. There was also evidence, in the form of wet ground around the lift station, that indicated a recent overflow of sewage from the lift station. Mr. Michael O'Neill was present at the time of the investigation and was asked about the current status of the lift station. Mr. O'Neill stated that only one functional pump was present in the lift station and that he was checking the lift station several times daily. However, based on my observations, the facility was not being maintained. I informed Mr. O'Neill of the problem with the one pump, and he stated he would check the pump, and that it was probably fouled with a rag.

I next evaluated the wastewater treatment plant. I noted that the plant was not secure in that several boards were missing from the fence surrounding the plant and the gate was unlocked. I noted that the air blower on the plant was running. The plant was in a state of severe disrepair with heavy corrosion on most of the above-water metal components. The mixed liquor in the aeration basin appeared darker than healthy mixed liquor should be and appeared thick in nature. The clarifier was full of sludge as was the chlorine contact basin, and I observed sludge discharging from the plant into Toledo Bend Reservoir. The disinfection equipment was non-functional, and a sample of the effluent showed that no disinfection of the discharging effluent was occurring.

The discharge point from the wastewater treatment plant is very close to a public boat ramp, which was being utilized by fisherman while the investigation was occurring. Effluent samples were collected of the discharging wastewater and were sent to the TCEQ and Sabine River Authority Lab for analysis. According to Mr. Ryan Pay, Sabine River Authority, who was present during the investigation, no effluent samples are being collected from the wastewater treatment plant. Visual observations of the wastewater treatment plant and sample results of the discharging effluent show that the wastewater treatment plant is not being operated in a manner that is protective of human health and the environment.

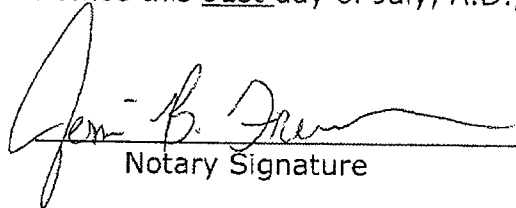


  
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Ronald Hebert  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Ronald Hebert, 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 31st day of July, A.D., 2013.

Notary Stamp

  
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Notary Signature

