

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 23, 2011

Via Hand Delivery
Via Certified Mail Return Receipt Requested
Article No. 7010 3090 0000 7807 1780
Via First Class Mail, Postage Pre-Paid

Andreas Johnson
Sellers Estates Mobile Home Community
6811 Rosemont Park Ln.
Katy, Texas 77494

Re: Andreas Johnson d/b/a Sellers Estates Mobile Home Community
Docket No. 2011-0436-UCR-E;
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Mr. Johnson:

On March 23, 2011, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an 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 the subject to this order is Andreas Johnson d/b/a Sellers Estates Mobile Home Community. The Emergency Order appointed Lonzo Gale ("Mr. Gale") as temporary manager of the public water system located at 15003 Sellers Rd., Houston, Harris County, Texas.

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on March 23, 2011. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on **June 8, 2011**. The Agenda begins at **9:30 a.m.** and will be held at **TCEQ Park 35 Complex, 12118 North I-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.

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 Order**. An Administrative Law Judge will be available to conduct a hearing at Agenda on June 8, 2011, should you so request.

Mr. Andreas Johnson
March 23, 2011
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Should you have any questions, please contact the TCEQ Litigation Division at (512) 239-0654.

Sincerely,

A handwritten signature in black ink that reads "Peipey Tang". The signature is written in a cursive, flowing style.

Peipey Tang, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality
Peipey.Tang@tceq.texas.gov

Enclosure

cc: Mr. Stephen Smith, Water Section Manager, Houston Regional Office
Mr. Terence Webb, Receivership Coordinator
Mr. Blas Coy, Office of Public Interest Counsel
Mr. Lonzo Gale, P.O. Box 314, Magnolia, Texas 77353

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2011-0436-UCR-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION AGAINST	§	
ANDREAS JOHNSON D/B/A	§	
SELLERS ESTATES MOBILE	§	TEXAS COMMISSION ON
HOME COMMUNITY;	§	
RN102671443;	§	
CCN12288	§	ENVIRONMENTAL QUALITY

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

On March 23, 2011, 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 Andreas Johnson d/b/a Sellers Estates Mobile Home Community ("Mr. Johnson").

**I.
FINDINGS OF FACT**

1. Mr. Johnson owns a public water system located at 15003 Sellers Rd., Houston, Harris County, Texas (the "Utility").
2. The Utility provides potable water service for compensation to approximately 37 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. 12288.
4. The TCEQ alleges that the Utility has discontinued the provision of service and necessary repairs to ensure continuous and adequate water service ("Exhibit A").
5. Commission records show that the mailing address for Mr. Johnson is 6811 Rosemont Park Ln., Katy, Texas 77494.
6. No other source of water is available to the more than 111 people whose water is supplied by the Utility.

7. During an inspection of the Utility conducted on September 1, 2010, a TCEQ Houston Regional investigator documented that Mr. Johnson violated the following requirements:
- a. 30 TEX. ADMIN. CODE § 290.46(f)(3)(D)(ii) and (m)(1)(B), by failing to inspect the pressure tank annually to determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in water tight condition and by failing to record and maintain results of these inspections for at least five years. Specifically, the Utility had not conducted any exterior inspections of the pressure tank and did not have any records of previous inspections for review.
 - b. 30 TEX. ADMIN. CODE § 290.44(d), by failing to design and maintain a water distribution system to provide at all points within the distribution network a minimum pressure of 35 pounds per square inch ("psi") at flow rates of at least 1.5 gallons per minute ("gpm") per connection at each service outlet or connection. Specifically, the pressure at the Utility was 26 psi.
 - c. 30 TEX. ADMIN. CODE § 290.44(d)(4), by failing to provide accurate metering devices at each service connection to provide water usage data. Specifically, the 37 connections were not individually metered.
 - d. 30 TEX. ADMIN. CODE § 290.110(c)(4)(A), by failing to perform at least once every seven days, chlorine residual tests on water collected from various locations within the distribution system.
 - e. 30 TEX. ADMIN. CODE § 290.110(d), by failing to possess a chlorine test kit.
 - f. 30 TEX. ADMIN. CODE § 290.41(c)(1)(F), by failing to make available sanitary control easements for the well or Executive Director approval for a substitute.
 - g. 30 TEX. ADMIN. CODE § 290.45(b)(1)(A)(ii), by failing to provide a pressure tank capacity of 50 gallons per connection. Specifically, the Utility provides 1500 total gallons and is required to provide 1850 total gallons, resulting in a shortage of 350 gallons.
 - h. 30 TEX. ADMIN. CODE § 290.45(b)(1)(A)(i), by failing to provide a minimum well capacity of 1.5 gpm per connection. Specifically, the Utility provides 30 gpm total and is required to provide 55.5 gpm total,

resulting in a shortage of 25.5 gpm total.

- i. 30 TEX. ADMIN. CODE § 290.46(e), by failing to be under the direct supervision of a licensed water works operator at all times. Specifically, the Utility did not employ a licensed operator.
- j. 30 TEX. ADMIN. CODE § 290.121(a), by failing to develop and maintain an up to date system monitoring plan.
- k. 30 TEX. ADMIN. CODE § 290.44(d)(5), by failing to provide the water system with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required.
- l. 30 TEX. ADMIN. CODE § 290.46(n)(2), by failing to maintain the map of the distribution system current so that valves and mains may be easily located during emergencies. Specifically, the Utility did not have a map of the distribution system available for review.
- m. 30 TEX. ADMIN. CODE § 290.42(l), by failing to compile and maintain a current and thorough plant operations manual for operator review and reference. Specifically, the Utility did not have a plant operations manual available for review.
- n. 30 TEX. ADMIN. CODE § 290.46(m), by failing to properly maintain the Utility by not removing all excess vegetation on the fence surrounding the well and pressure tank.
- o. 30 TEX. ADMIN. CODE § 290.43(d)(3), by failing to provide the pressure tank with facilities for maintaining the air-water-volume at the design water level and working pressure. Specifically, the pressure tank did not have an air compressor nor a site glass.
- p. 30 TEX. ADMIN. CODE § 290.46(j), by failing to complete a customer service inspection certification prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe that cross-connections or other unacceptable plumbing practices exist, or after any material improvement, correction, or addition to the private water distribution facilities.
- q. 30 TEX. ADMIN. CODE § 290.46(v), by failing to install a water system electrical wiring in compliance with local or national electrical code. Specifically, the wiring at the electrical box was exposed.
- r. 30 TEX. ADMIN. CODE § 290.46(m)(4), by failing to maintain all pressure

maintenance facilities in a watertight condition. Specifically, the leaking chlorine injection line located on the chlorine line must be repaired and replaced as necessary and the leaking pressure release device located on the well discharge line must be repaired or replaced as necessary.

- s. 30 TEX. ADMIN. CODE § 290.46(m), by failing to properly maintain the Utility by not resurfacing the bottom of the pressure tank. Specifically, the pressure tank had rust and a possible leak next to the incoming water line.
 - t. 30 TEX. ADMIN. CODE § 290.42(e)(5), by failing to provide a housed and locked enclosure for hypochlorination solution containers and pumps to protect them from vandalism and adverse weather conditions. Specifically, the chlorine solution container was not properly housed.
 - u. 30 TEX. ADMIN. CODE § 290.46(k), by failing to acquire approval by the Executive Director to permit a physical connection between the distribution system of the public drinking water supply and that of any other water supply. Specifically, customers were using garden hoses connected between homes to access water.
 - v. 30 TEX. ADMIN. CODE § 290.46(m), by failing to properly maintain the regulated entity by not cleaning the inside of the bottom of the hypochlorination solution container. Specifically, the hypochlorination solution container had an accumulation of mineral deposits.
 - w. 30 TEX. ADMIN. CODE § 290.46(i), by failing to adopt an adequate plumbing service agreement with provisions for proper enforcement.
8. 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, a temporary manager is necessary to assume 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.
9. Lonzo Gale ("Mr. Gale") has agreed to serve as temporary manager of the Utility and his mailing address is P.O. Box 314, Magnolia, Texas 77353. His telephone number is (713) 542-8405.
10. 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.

11. This matter has been referred to the Attorney General's Office 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 Utility.

II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1, 2, and 3, Mr. Johnson owns the retail public utility as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 4, 6, 7, and 8 show that the 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).
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 the 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

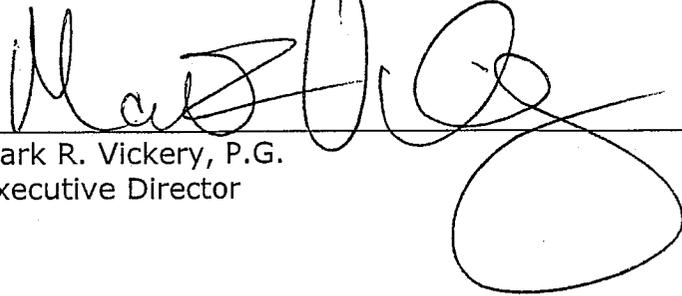
headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address of Mr. Johnson is set forth in Finding of Fact No. 5.

III. ORDER

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. March 23, 2011.
2. Immediately upon the effective date of this Emergency Order, Mr. Gale is hereby appointed to temporarily manage and operate the Utility.
3. Mr. Gale 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 i.e. September 19, 2011, whichever occurs first.
4. Mr. Gale 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. Mr. Gale shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Order.
6. Mr. Gale's 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. Mr. Gale's compensation will come from Utility revenues in the amount of fifteen dollars (\$15.00) per month per connection.
8. Mr. Gale 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 June 8, 2011 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the June 8, 2011 Agenda meeting, Mr. Johnson 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

A handwritten signature in black ink, appearing to read 'Mark R. Vickery', is written over a horizontal line. The signature is stylized and extends below the line with a large loop.

Mark R. Vickery, P.G.
Executive Director

AFFIDAVIT OF LETICIA DE LEON

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

My name is Leticia De Leon. I am an environmental investigator for the Houston 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 March 21, 2011, I spoke with Fernando Romo, a resident at Sellers Estates Mobile Home Community (the "Utility"). Mr. Romo stated that the Utility had been out of water since March 18, 2011. On March 22, 2011, I arrived at the Utility and observed that water service was unavailable for all areas of the Utility.

Leticia De Leon

Leticia De Leon
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Leticia De Leon, 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 22 day of March, A.D., 2011.

Nara Ann Lemoine

Notary Signature

Notary Stamp

