

TCEQ DOCKET NO. 2013-1405-UCR-E

**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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CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**EMERGENCY ORDER
APPOINTING A TEMPORARY MANAGER
OF A WASTEWATER 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 361, 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 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 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, 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 in violation of. (Default Judgment Violation No. 28.)
- e. 30 TEX. ADMIN. CODE § 305.125(5) and Permit No. WQ00114015001, 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, 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. Therefore, a temporary manager is necessary to assume operations of the Sewer Utility to ensure wastewater is treated and managed in a manner that meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health and Safety Code, and is safe for human health and environmental quality.
13. The Sabine River Authority of Texas has agreed to serve as temporary manager of the Sewer Utility. 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.

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, 6, 7, and 8 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 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 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.

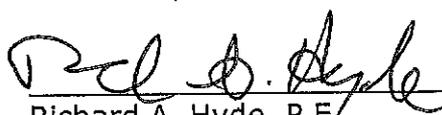
III. ORDER

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, 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, 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 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 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.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY


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

AFFIDAVIT OF RONALD HEBERT

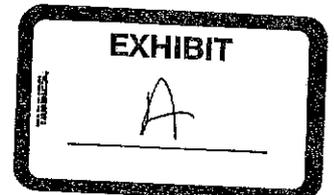
STATE OF TEXAS §
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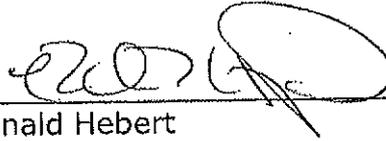
My name is Ronald Hebert. I am the Water Section Manager for the Beaumont Regional Office of the Texas Commission on Environmental Quality. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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.

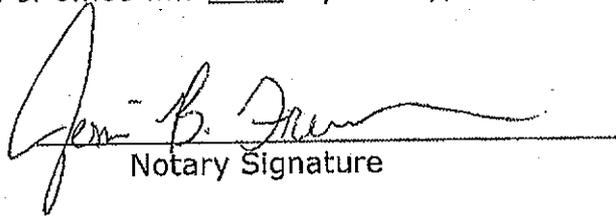




Ronald Hebert
Texas Commission on Environmental Quality

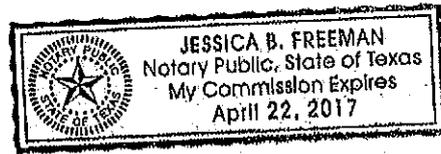
Before me, the undersigned authority, on this day personally appeared Ronald Hebert, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 31st day of July, A.D., 2013.



Notary Signature

Notary Stamp

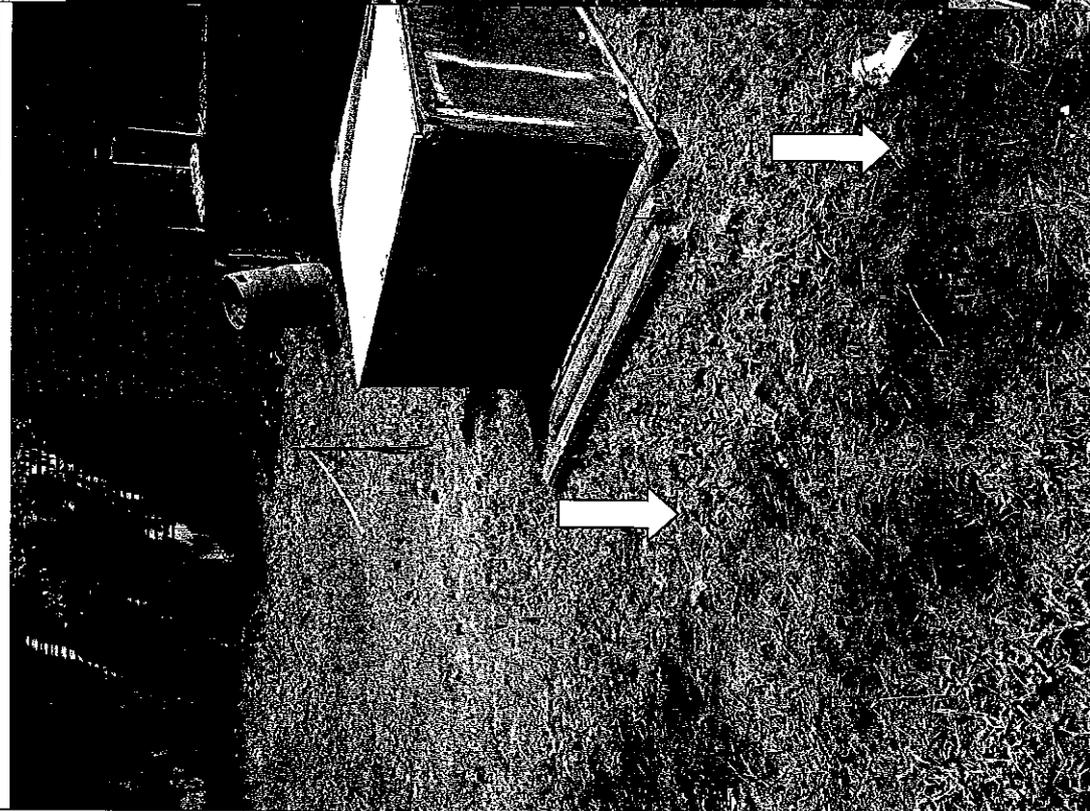


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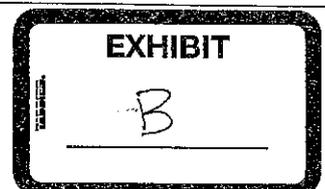
Facility Name: Frontier Park	Facility County: Sabine	Investigator: Ronald Hebert
Investigation Number:		Investigation Date: 7/29/2013



Collection system lift station. Note only one functional pump. The pump was running but was not pumping down the lift station. The Station had about 2 feet of capacity before overflowing.

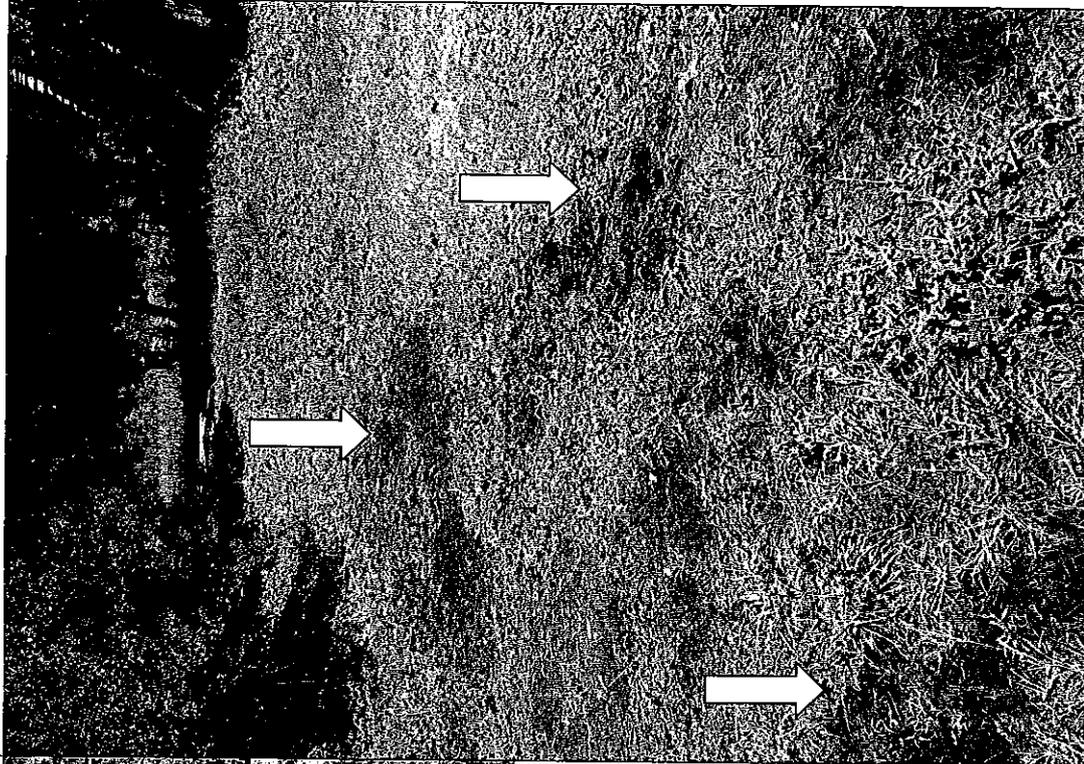


Collection system lift station inside of wooden box. Note wet area around lift station evident of recent overflow.

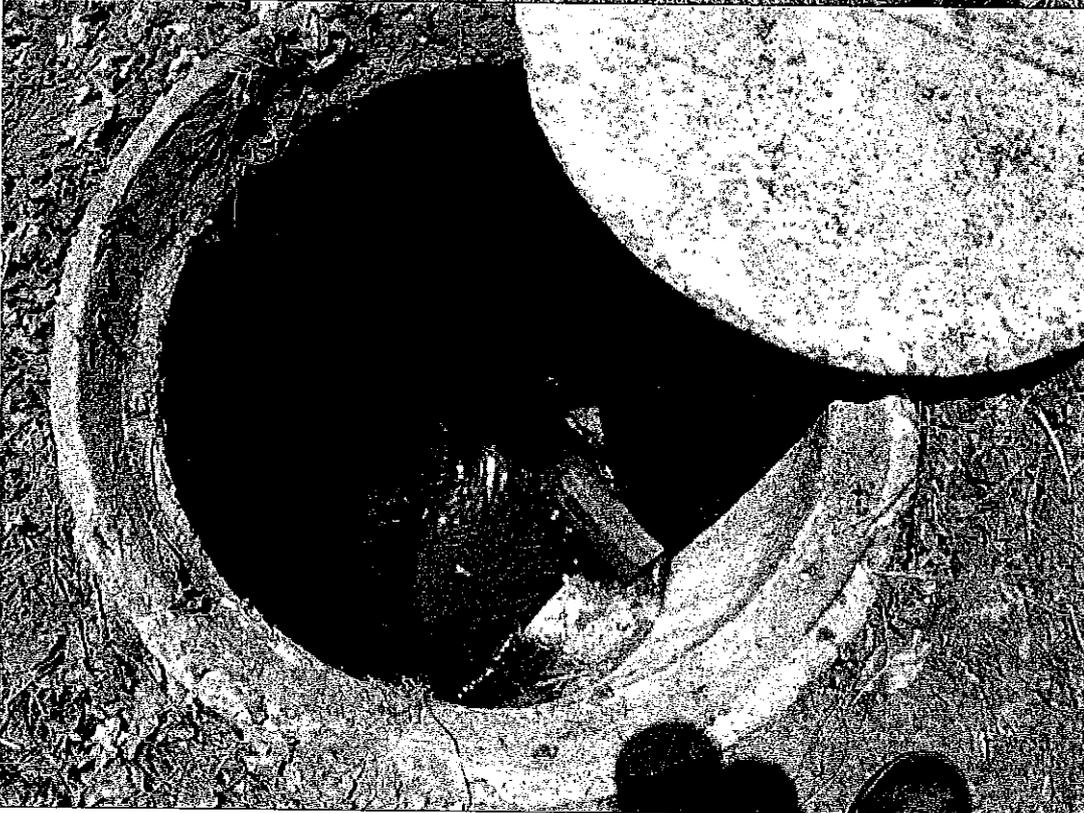




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Wet ground downhill from lift station evidence of recent overflow.



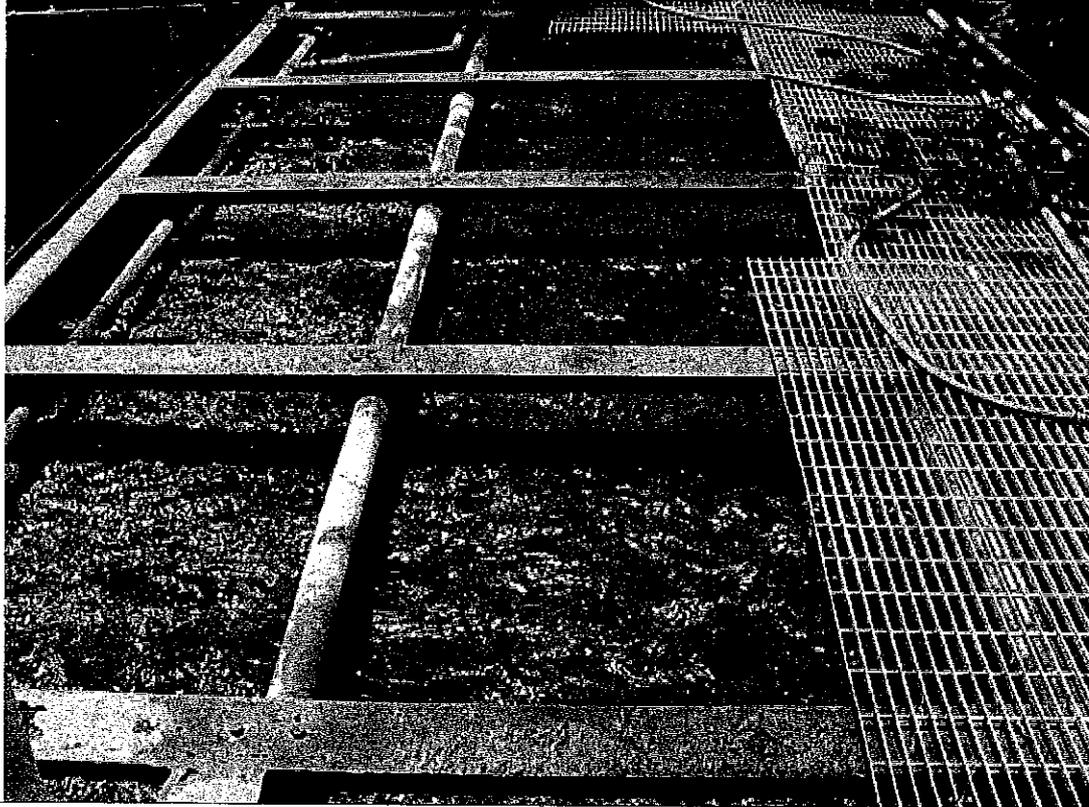
Open manhole just upstream of treatment plant. Note flow in manhole.



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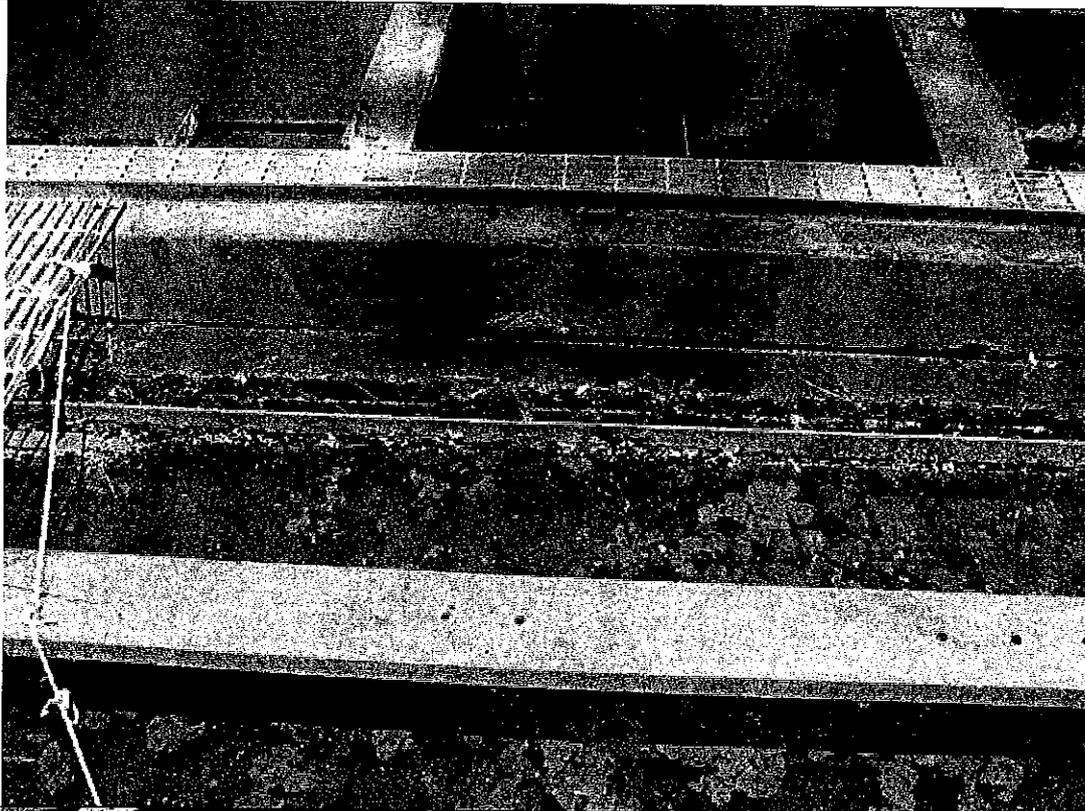
On-site lift station just upstream of treatment plant. Note only one functional pump present. Note flow into lift station.



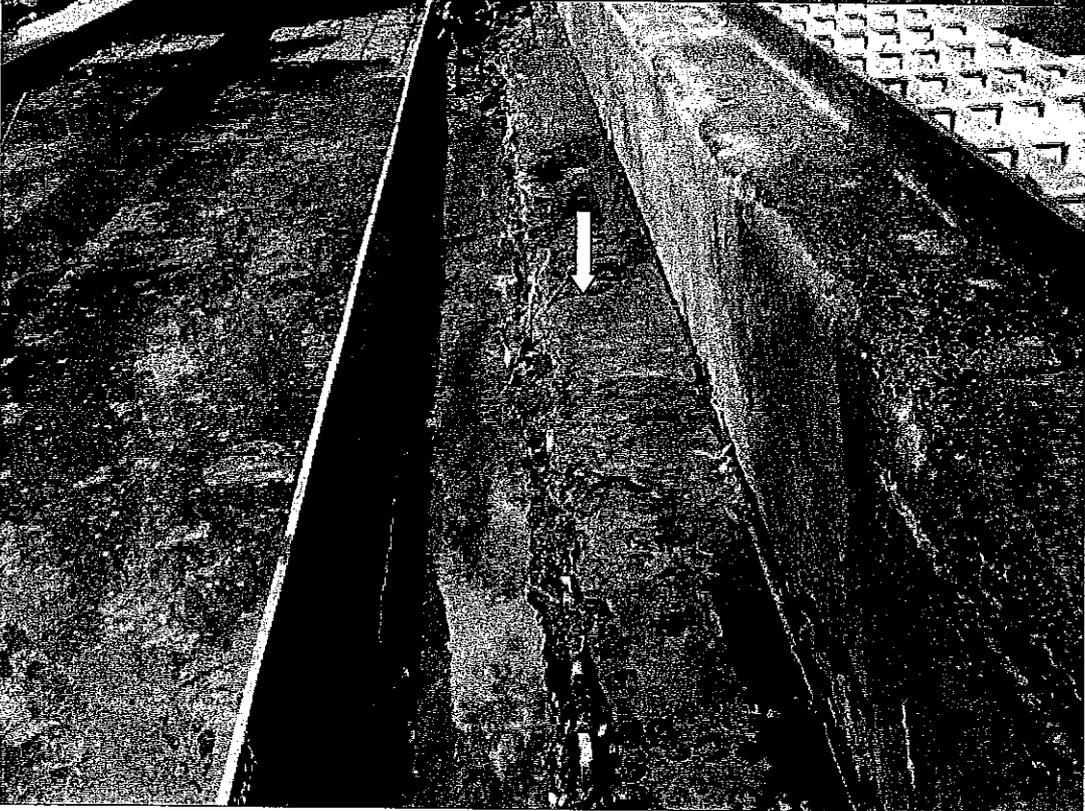
Aeration basin in treatment plant. Note that the air was on. The mixed liquor is dark brown and appears thick.



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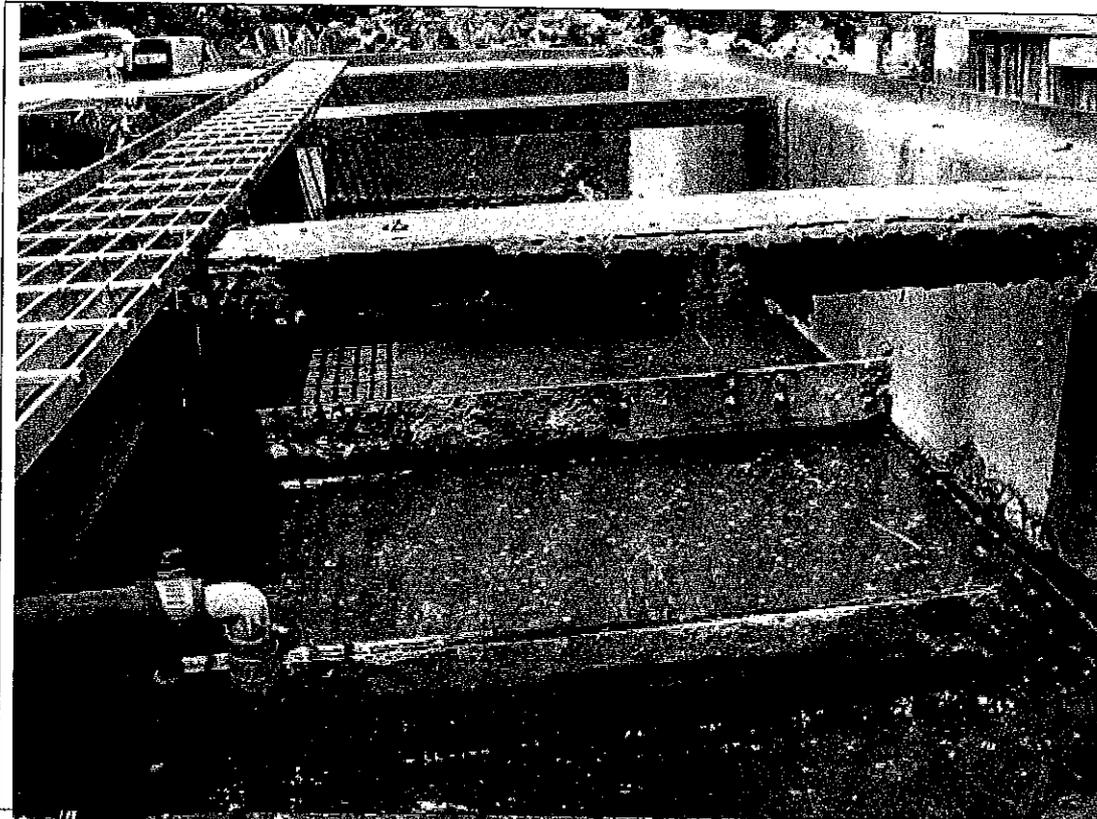
Clarifier and sawtooth weir. Note high amount of bulking sludge in clarifier and on sawtooth weir. You can also note the excessive sludge blanket just below the water surface. 9' sludge blanket with clarifier depth of 10'. Operational standards state that sludge blanket should be no more than 25% of the total clarifier depth.



Side view of clarifier and sawtooth weir. Note high amount of bulking sludge and sludge carryover to chlorine contact basin. Flow is toward the top of the picture



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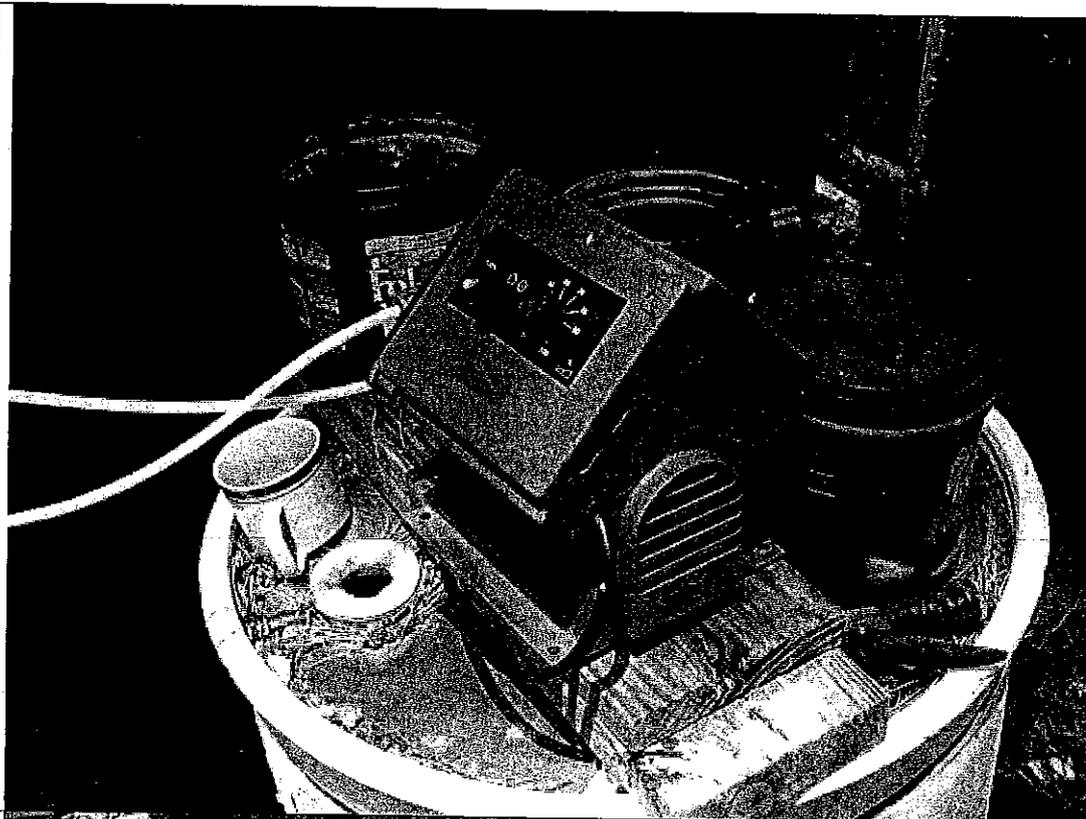
Chlorine contact basin. Note there was no chlorine being added to effluent. Note severe corrosion and tan color of the effluent. Effluent should be clear at this point.



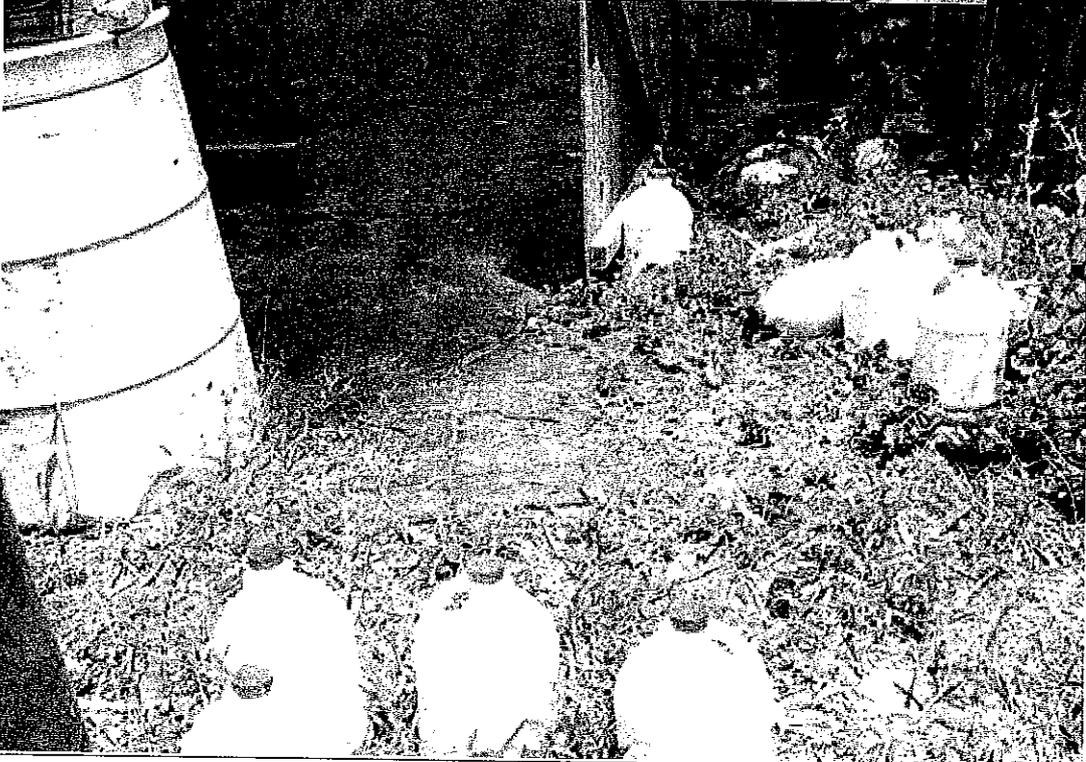
Final basin prior to discharge to Toledo Bend Reservoir. Note high amount of bulking sludge. Basin has 1.5 feet of sludge in 2 foot basin. No sludge should be present in the basin. Sludge is being discharged to Toledo Bend. Note samples were collected just below v-notch weir (arrow).



PHOTOGRAPHIC DOCUMENTATION



Chlorine pump on top of drum. Note chlorine pump was non functional.



Bottles of Clorox around wastewater treatment plant.



costs.

THE COURT FINDS:

1. The State filed its Original Petition and Application for Permanent Injunction on October 4, 2010.
2. Citation was issued on October 7, 2010.
3. Defendant was properly served with citation and a copy of the State's petition by personal service upon Defendant on October 13, 2010.
4. The completed citation was filed on December 7, 2010. The citation and proof of service have been on file with the clerk of the court at least ten days, excluding the day of filing and today as required by Rule 107 of the Texas Rules of Civil Procedure.
5. Defendant's last known mailing address is Michael O'Neill, RR 1, Box 1690, Hemphill, Sabine County, Texas 75948. The State has filed a Certificate of Defendant's Last Known Address with the records in this cause. *See Exhibit A, Certificate of Defendant's Last Known Address.*
6. Defendant is not a member of the United States military. The State has filed a Soldiers' and Sailors' Affidavit in the records of this cause. *See Exhibit B, Soldiers' and Sailors' Affidavit.*
7. The deadline for Defendant to file an answer was November 8, 2010. Defendant failed to file an answer, or any pleading constituting an answer, and has not entered an appearance in this cause. Therefore, Defendant has admitted all facts alleged in

the State's Original Petition and Application for Permanent Injunction.

8. The administrative and civil penalties sought in the State's Original Petition and Application for Permanent Injunction are liquidated and proven by a written instrument that allows the Court to calculate the penalties without the necessity of a hearing.

9. At all times relevant to the violations in this matter, Defendant owned and operated the a PWSS and WWTP located six miles east of Milam on Highway 21 at Toledo Bend Reservoir, Sabine County, Texas (the facility).

FURTHER THE COURT FINDS THAT:

10. The State is entitled to judgment for civil penalties against Defendant of not less than \$50 nor more than \$25,000 for each day that Defendant violated the Tex. Water Code, Tex. Health and Safety Code and Texas Commission on Environmental Quality (TCEQ) rules. Tex. Water Code, § 7.102. Each day of a continuing violation is a separate violation. *Id.* The State is only seeking civil penalties against Defendant for the statutory minimum of \$50.00 per violation per day. The civil penalties for the violations are liquidated and proven by a written instrument that allows the Court to calculate the penalties without the necessity of a hearing.

Violation 1: Failure to Maintain Plant Operations Manual

11. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to compile and maintain a complete and up-to-date plant operations manual in violation of 30 TAC § 290.42(I) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering

Provision 2.f.i. Therefore, Defendant has violated 30 TAC § 290.42(l) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.f.i. for 1,328 days.

Violation 2: Failure to Maintain Chemical Monitoring Plan

12. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to prepare and maintain an up-to-date chemical and microbiological monitoring plan for the facility in violation of 30 TAC § 290.121(a) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.b.ii. Therefore, Defendant has violated 30 TAC § 290.121(a) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.b.ii. for 1,328 days.

Violation 3: Failure to Provide Meters

13. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to provide one meter at each residence in violation of 30 TAC § 290.44(d)(4) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.h.ii. Therefore, Defendant has violated 30 TAC § 290.44(d)(4) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.h.ii. for 1,328 days.

Violation 4: Failure to Dead-End Main Flushing Records

14. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to maintain records of the dates that dead-end mains were flushed for the facility and maintain those records for at least two years in violation of 30 TAC § 290.46(f)(3)(A)(iv) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.d.iii. Therefore, Defendant has violated 30 TAC § 290.46(f)(3)(A)(iv) and TCEQ Order Docket No. 2007-

0712-PWS-E, Ordering Provision 2.d.iii. for 1,328 days.

Violation 5: Failure to Maintain Distribution Map

15. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to compile and maintain an up-to-date distribution map in violation of 30 TAC § 290.46(n)(2) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.d.iv. Therefore, Defendant has violated 30 TAC § 290.46(n)(2) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.d.iv. for 1,328 days.

Violation 6: Failure to Install Well Sealing Block

16. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to install a proper sealing block around a well at the PWSS in violation of 30 TAC § 290.41(c)(3)(J) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.f.iii. Therefore, Defendant has violated 30 TAC § 290.41(c)(3)(J) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.f.iii. for 1,328 days.

Violation 7: Failure to Establish Backflow Prevention Program

17. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to establish an appropriate backflow prevention program for the facility in violation of 30 TAC § 290.44(h)(1) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.h.i. Therefore, Defendant has violated 30 TAC § 290.44(h)(1) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.h.i. for 1,328 days.

Violation 8: Failure to Record Chemicals Used

18. The Court finds that the Defendant failed from August 20, 2009 to October 4, 2010 to record the amount of chemicals used each week at the facility in violation of 30 TAC § 290.46(f)(3)(A)(i)(III). Therefore, Defendant has violated 30 TAC § 290.46(f)(3)(A)(i)(III) for 410 days.

Violation 9: Failure to Record Volume of Water Treated

19. The Court finds that the Defendant failed from August 20, 2009 to October 4, 2010 to record the volume of water treated each week at the facility in violation of 30 TAC § 290.46(f)(3)(A)(ii)(III). Therefore, Defendant has violated 30 TAC § 290.46(f)(3)(A)(ii)(III) for 410 days.

Violation 10: Failure to Monitor Disinfectant Residual Concentration

20. The Court finds that the Defendant failed from August 20, 2009 to October 4, 2010 to monitor and record the disinfectant residual concentration in the distribution system at the facility at least once every seven days in violation of 30 TAC § 290.110(e)(4)(A) and 30 TAC § 290.46(f)(3)(B)(iii). Therefore, Defendant has violated 30 TAC § 290.110(e)(4)(A) and 30 TAC § 290.46(f)(3)(B)(iii) for 410 days.

Violation 11: Failure to Inspect Tanks

21. The Court finds that the Defendant failed from August 20, 2009 to October 4, 2010 to inspect the ground storage and pressure tanks at the facility annually in violation of 30 TAC § 290.46(m)(1). Therefore, Defendant has violated 30 TAC § 290.46(m)(1) for 410 days.

Violation 12: Failure to Have Licensed Water Works Operator

22. The Court finds that the Defendant failed from August 20, 2009 to October 4, 2010 to operate the facility under the direct supervision of an appropriately licensed water works operator in violation of 30 TAC § 290.46(e). Therefore, Defendant has violated 30 TAC § 290.46(e) for 410 days.

Violation 13: Failure to Calibrate Well Meter

23. The Court finds that the Defendant failed from August 20, 2009 to October 4, 2010 to calibrate the well meter at the facility at least once every three years in violation of 30 TAC § 290.46(s)(1) and 30 TAC § 290.41(c)(N)(3). Therefore, Defendant has violated 30 TAC § 290.46(s)(1) and 30 TAC § 290.41(c)(N)(3) for 410 days.

Violation 14: Failure to Check Disinfectant Residual Analyzer

24. The Court finds that the Defendant failed from August 20, 2009 to October 4, 2010 to check the accuracy of the disinfectant residual analyzer at least once every 30 days in violation of 30 TAC § 290.46(s)(2)(C)(i). Therefore, Defendant has violated 30 TAC § 290.46(s)(2)(C)(i) for 410 days.

Violation 15: Failure to Provide Proper Well Capacity

25. The Court finds that the Defendant failed from August 20, 2009 to October 4, 2010 to provide a well capacity of 0.6 gallons per minute (gpm) per connection in violation of 30 TAC § 290.45(b)(1)(B)(i) and 30 TAC § 290.45(c)(1)(B)(i). Therefore, Defendant has violated 30 TAC § 290.45(b)(1)(B)(i) and 30 TAC § 290.45(c)(1)(B)(i) for 410 days.

Violation 16: Failure to Provide Proper Tank Capacity

26. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to provide a pressure tank capacity of at least 20 gallons per community connection and 10 gallons per non-community connection in violation of 30 TAC § 290.45(c)(1)(B)(iv) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.h.iii. Therefore, Defendant has violated 30 TAC § 290.45(c)(1)(B)(iv) and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.h.iii. for 1,328 days.

Violation 17: Failure to Provide an Inspection Port

27. The Court finds that the Defendant failed from August 20, 2009 to October 4, 2010 to equip the pressure tank with an inspection port in violation of 30 TAC § 290.43(d)(1). Therefore, Defendant has violated 30 TAC § 290.43(d)(1) for 410 days.

Violation 18: Failure to Provide 2004 Consumer Confidence Report (CCR)

28. The Court finds that the Defendant failed from June 3, 2008 to October 4, 2010 to provide the 2004 CCR to customers and to submit the required Certificate of Delivery to the TCEQ in violation of 30 TAC §§ 290.271(b), 290.274(a) and 290.274(c), and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.a, b and c. Therefore, Defendant has violated 30 TAC §§ 290.271(b), 290.274(a) and 290.274(c), and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.a, b and c for 849 days.

Violation 19: Failure to Provide 2005 CCR

29. The Court finds that the Defendant failed from June 3, 2008 to October 4, 2010 to provide the 2005 CCR to customers and to submit the required Certificate of Delivery to

the TCEQ in violation of 30 TAC §§ 290.271(b), 290.274(a) and 290.274(c), and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.a, b and c. Therefore, Defendant has violated 30 TAC §§ 290.271(b), 290.274(a) and 290.274(c), and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.a, b and c for 849 days.

Violation 20: Failure to Provide 2006 CCR

30. The Court finds that the Defendant failed from June 3, 2008 to October 4, 2010 to provide the 2006 CCR to customers and to submit the required Certificate of Delivery to the TCEQ in violation of 30 TAC §§ 290.271(b), 290.274(a) and 290.274(c), and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.a, b and c. Therefore, Defendant has violated 30 TAC §§ 290.271(b), 290.274(a) and 290.274(c), and TCEQ Order Docket No. 2007-0712-PWS-E, Ordering Provision 2.a, b and c for 849 days.

Violation 21: Failure to Provide 2007 CCR

31. The Court finds that the Defendant failed from October 15, 2009 to October 4, 2010 to provide the 2007 CCR to customers and to submit the required Certificate of Delivery to the TCEQ in violation of 30 TAC §§ 290.271(b), 290.274(a) and 290.274(c). Therefore, Defendant has violated 30 TAC §§ 290.271(b), 290.274(a) and 290.274(c) for 354 days.

Violation 22: Failure to Issue Boil Water Notice

32. The Court finds that the Defendant failed on January 12, 2010 to issue a proper boil water notice and notify the TCEQ of the issuance of the boil water notice in violation of 30 TAC § 290.46(q)(1). Therefore, Defendant violated 30 TAC § 290.46(q)(1) for one

day.

Violation 23: Failure to Issue Boil Water Notice

33. The Court finds that the Defendant failed from July 16, 2010 until July 23, 2010 to issue a proper boil water notice and notify the TCEQ of the issuance of the boil water notice in violation of 30 TAC § 290.46(q)(1). Therefore, Defendant violated 30 TAC § 290.46(q)(1) for eight days.

Violation 24: Failure to Submit Revised Discharge Monitoring Report (DMR)

34. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to submit a revised September 2006 DMR which reflected the correct pH data for that reporting period in violation of 30 TAC § 305.125 and TCEQ Order Docket No. 2007-0049-MLM-E, Ordering Provision 2.b.ii. Therefore, Defendant has violated 30 TAC § 305.125 and TCEQ Order Docket No. 2007-0049-MLM-E, Ordering Provision 2.b.ii. for 1,328 days.

Violation 25: Failure to Implement Procedures for the Lift Stations

35. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to develop and implement operational and maintenance procedures to prevent future discharges from the lift stations at the facility in violation of 30 TAC § 305.125(4) and TCEQ Order Docket No. 2007-0049-MLM-E, Ordering Provision 2.c. Therefore, Defendant has violated 30 TAC § 305.125(4) and TCEQ Order Docket No. 2007-0049-MLM-E, Ordering Provision 2.c. for 1,328 days.

Violation 26: Failure to Hire Licensed Operator

36. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to hire a licensed wastewater operator and/or complete training and licensing requirements to become a licensed wastewater operator in violation of 30 TAC § 30.331(b), Tex. Water Code §§ 26.0301 and 37.003, and TCEQ Order Docket No. 2007-0049-MLM-E, Ordering Provision 2.d. Therefore, Defendant has violated 30 TAC § 30.331(b), Tex. Water Code §§ 26.0301 and 37.003, and TCEQ Order Docket No. 2007-0049-MLM-E, Ordering Provision 2.d. for 1,328 days.

Violation 27: Failure to Submit Certification of Limitations and Monitoring

37. The Court finds that the Defendant failed from February 13, 2007 to October 4, 2010 to submit written certification of compliance with the effluent limitations and monitoring requirement specified in Permit No. WQ00114015001 in violation TCEQ Order Docket No. 2007-0049-MLM-E, Ordering Provision 2.e. Therefore, Defendant has violated Permit No. WQ00114015001 and TCEQ Order Docket No. 2007-0049-MLM-E, Ordering Provision 2.e. for 1,328 days.

Violation 28: Failure to Adjust Feed Rate of Chlorine

38. The Court finds that the Defendant failed from December 11, 2008 to October 4, 2010 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 in violation of 30 TAC § 305.125(1) and Permit No. WQ00114015001. Therefore, Defendant has violated 30 TAC § 305.125(1) and Permit No. WQ00114015001 for 617 days.

Violation 29: Failure to Properly Document Effluent Flow Rate Collection

39. The Court finds that the Defendant failed from December 11, 2008 to October 4, 2010 to record the time and identity of the individual who read the effluent flow rate, collected the sample and conducted the analyses for the effluent total chlorine for the months of September, October and November 2008 in violation of 30 TAC § 319.7(a) and Permit No. WQ00114015001. Therefore, Defendant has violated 30 TAC § 319.7(a) and Permit No. WQ00114015001 for 617 days.

Violation 30: Failure to Provide Duplex Pumping Capability

40. The Court finds that the Defendant failed from December 11, 2008 to October 4, 2010 to provide duplex pumping capability at the collection lift station in violation of 30 TAC § 305.125(5) and Permit No. WQ00114015001. Therefore, Defendant has violated 30 TAC § 305.125(5) and Permit No. WQ00114015001 for 617 days.

Violation 31: Failure to Provide High Water Alarm Systems

41. The Court finds that the Defendant failed from December 11, 2008 to October 4, 2010 to provide high water alarm systems at the collection system lift station and the influent lift station in violation of 30 TAC § 305.125(5) and Permit No. WQ00114015001. Therefore, Defendant has violated 30 TAC § 305.125(5) and Permit No. WQ00114015001 for 617 days.

Violation 32: Failure to Provide High Water Alarm Systems

42. The Court finds that the Defendant failed from December 11, 2008 to October 4, 2010 to provide provide noncompliance notification for effluent that deviates from the

permit limitation greater than 40% in violation of 30 TAC § 305.125(1) and Permit No. WQ00114015001. Therefore, Defendant has violated 30 TAC § 305.125(1) and Permit No. WQ00114015001 for 617 days.

Violation 33: Failure to Pay Administrative Penalties

43. The Court finds that the Defendant failed to pay \$55,921.00 in administrative penalties ordered to be paid by TCEQ Order No. 2007-0712-PWS-E (\$6,670.00 ordered administrative penalties), TCEQ Order No. 2008-1103-PWS-E (\$716.00 ordered administrative penalties), and TCEQ Order No. 2007-0449-MLM-E (\$48,535.00 ordered administrative penalties).

ATTORNEY'S FEES

THE COURT FURTHER FINDS THAT:

44. The State is entitled to recover from Defendant its reasonable attorney's fees, investigative costs, and court costs incurred in prosecuting this matter. Tex. Water Code § 7.108; Tex. Gov't Code § 402.006(c).

45. As evidenced by the State's affidavit, admitted by the Court, and filed with the records in this cause, the State's reasonable and necessary attorney's fees in this case are \$6,413.75. *See* Exhibit C, Affidavit for Attorney's Fees.

46. As evidenced by the State's affidavit, admitted by the Court, and filed with the records in this cause, the State's reasonable and necessary attorney's fees in the event that proceedings to collect this judgment become necessary are \$2,000.00. *See* Exhibit C, Affidavit for Attorney's Fees.

47. As evidenced by the State's affidavit, admitted by the Court, and filed with the records of this cause, the State's reasonable and necessary attorney's fees in the event of an appeal by the Defendant to the Court of Appeals are \$5,000.00. *See Exhibit C, Affidavit for Attorney's Fees.*

48. As evidenced by the State's affidavit, admitted by the Court, and filed with the records of this cause, the State's reasonable and necessary attorney's fees in the event of an appeal by the Defendant to the Texas Supreme Court for preparation of a petition for review are \$8,000.00. *See Exhibit C, Affidavit for Attorney's Fees.*

49. As evidenced by the State's affidavit, admitted by the Court, and filed with the records of this cause, the State's reasonable and necessary attorney's fees in the event that a petition for review by the Texas Supreme Court is granted are \$15,000.00. *See Exhibit C, Affidavit for Attorney's Fees.*

FURTHER THE COURT FINDS THAT:

OTHER

50. The Court finds that the civil penalties assessed herein are payable to and for the benefit of a government unit and are not compensation for actual pecuniary loss, and, therefore, are not dischargeable under federal bankruptcy laws.

51. The Court further finds that the applicable judgment interest rate for the date of this Default Judgment as published by the Texas Office of Consumer Credit in accordance with §304.003 of the Texas Finance Code is five percent.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

52. Immediately upon the date the Defendant receives this Default Judgment, Defendant, his agents, employees, and all persons in active concert or participation with him are hereby **permanently enjoined** as follows: Defendant shall ensure that the WWTP and PWSS are operated in compliance with all the provisions of the Tex. Health & Safety Code, the Tex. Water Code, TCEQ rules promulgated under the Tex. Health & Safety Code and the Tex. Water Code, and TCEQ issued permits.

53. Within thirty (30) days after the date Defendant receives this Default Judgment, Defendant, his agents, employees, and all persons in active concert or participation with him are hereby **permanently enjoined** as follows:

- A. Defendant shall compile and maintain a complete and up-to-date plant operations manual in accordance with 30 TAC § 290.42(l) and TCEQ Order Docket No. 2007-0712-PWS-E.
- B. Defendant shall prepare and maintain an up-to-date chemical and microbiological monitoring plan in accordance with 30 TAC § 290.121(a) and TCEQ Order Docket No. 2007-0712-PWS-E.
- C. Defendant shall provide one meter per residence in accordance with 30 TAC § 290.44(d)(4) and TCEQ Order Docket No. 2007-0712-PWS-E.
- D. Defendant shall maintain records of the dates that dead-end mains were flushed and maintain records of those dates for at least 2 years in accordance with 30 TAC § 290.46(f)(3)(A)(iv) and TCEQ Order Docket No. 2007-0712-PWS-E.

- E. Defendant shall compile and maintain an up-to-date distribution map in accordance with 30 TAC § 290.46(n)(2) and TCEQ Order Docket No. 2007-0712-PWS-E.
- F. Defendant shall install a proper sealing block around all wells at the PWSS in accordance with 30 TAC § 290.41(c)(3)(J) and TCEQ Order Docket No. 2007-0712-PWS-E.
- G. Defendant shall establish an appropriate backflow prevention program in accordance with 30 TAC § 290.44(h)(1) and TCEQ Order Docket No. 2007-0712-PWS-E.

- H. Defendant shall record the amount of chemical used each week in accordance with 30 TAC § 290.46(f)(3)(A)(i)(III).
- I. Defendant shall record the volume of water treated each week in accordance with 30 TAC § 290.46(f)(3)(A)(ii)(III).
- J. Defendant shall monitor and record the disinfectant residual concentration in the distribution system at least once every seven days in accordance with 30 TAC § 290.110(c)(4)(A) and 30 TAC § 290.46(f)(3)(B)(iii).
- K. Defendant shall inspect the system's ground storage and pressure tanks annually in accordance with 30 TAC § 290.46(m)(1).
- L. Defendant shall operate the public water system under the direct supervision of an appropriately licensed water works operator in

accordance with 30 TAC § 290.46(e).

- M. Defendant shall calibrate all well meters in accordance with 30 TAC § 290.46(s)(1) and 30 TAC § 290.41(c)(3)(N) and continue to do so every three years.
- N. Defendant shall check the accuracy of the disinfectant residual analyzer at least once every 30 days in accordance with 30 TAC § 290.46(s)(2)(C)(i).
- O. Defendant shall provide a well capacity of 0.6 gallons per minute (gpm) per connection in accordance with 30 TAC § 290.45(b)(1)(B)(i) and 30 TAC § 290.45(c)(1)(B)(i).
- P. Defendant shall provide a pressure tank capacity of at least 20 gallons per community connection and 10 gallons per non-community connection in accordance with 30 TAC § 290.45(c)(1)(B)(iv) and TCEQ Order Docket No. 2007-0712-PWS-E.
- Q. Defendant shall equip the pressure tank with an inspection port in accordance with 30 TAC § 290.43(d)(1).
- R. Defendant shall provide annual Consumer Confidence Reports to customers and submit required Certificates of Delivery to the TCEQ in accordance with 30 TAC § 290.271(b), 30 TAC § 290.274(a), 30 TAC § 290.274(c).
- S. Defendant shall issue proper boil water notices and notify the TCEQ of

the issuance of any boil water notices in accordance with 30 TAC § 290.46(q)(l).

- T. Defendant shall submit the September 2006 Discharge Monitoring Report (DMR) that includes the correct pH data for that reporting period in accordance with 30 TAC § 305.125 and TCEQ Default Order Docket No. 2007-0449-MLM-E.
- U. Defendant shall develop and implement operational and maintenance procedures to prevent future discharges from the lift stations in accordance with 30 TAC § 305.125(4), Tex. Water Code § 26.121 and TCEQ Default Order Docket No. 2007-0449-MLM-E.
- V. Defendant shall hire a licensed operator and/or complete training to become a licensed wastewater operator in accordance with 30 TAC § 30.331(b), Tex. Water Code §§ 26.0301 and 37.003, and TCEQ Default Order Docket No. 2007-0449-MLM-E.
- W. Defendant shall submit written certification of compliance with the effluent limitations and monitoring requirements specified in Water Quality Permit No. WQ0014015-00 and required under TCEQ Default Order Docket No. 2007-0449-MLM-E.
- X. Defendant shall adjust the feed rate of chlorine tablets to ensure that the total chlorine residual is maintained between 1.0 and 4.0 mg/l, and submit one month's logs that include total chlorine residual results in

compliance with effluent limitations and monitoring requirements, as required by 30 TAC § 305.125(1) and TCEQ Default Order Docket No. 2007-0449-MLM-E.

- Y. Defendant shall submit one month's operations logs that include sample collection and analyses, and effluent flow reading results, and shall maintain all operations logs in accordance with 30 TAC § 319.7(a) and Permit No. WQ00114015001.
- Z. Defendant shall ensure that the collection system lift station has duplex pumping capacity at all times and that the lift stations serving the system are fully operational at all times, in accordance with 30 TAC § 305.125(5) and Permit No. WQ00114015001.
- AA. Defendant shall install audio-visual high level alarms on all lift stations serving the wastewater treatment plant and ensure that all such audio-visual high level alarms are properly maintained and properly functioning at all times, in accordance with 30 TAC § 305.125(5) and Permit No. WQ00114015001.
- BB. Defendant shall develop and implement a Standard Operating Procedure (SOP) for non-compliance reporting for effluent violations that deviate by more than 40% from the permitted effluent limitation and submit a copy of the SOP to TCEQ Region 10 office in accordance with 30 TAC § 305.125(1) and Permit No. WQ00114015001.

54. Defendant shall submit a report within 60 days of the issuance of the permanent injunction that documents that compliance with the above permanent injunctive provisions at the PWSS and WWTP. The report must be supported with photographs, logs and other documentation, and must be sent to the attention of David L. Green, Assistant Attorney General, Environmental Protection and Administrative Law Division, P.O. Box 12548, Austin, TX 78711-2548.

55. The Defendant shall provide the TCEQ access to PWSS and WWTP to perform investigations and evaluations.

56. The Clerk of this Court shall issue a Permanent Injunction against Defendant, and his agents, employees, and all persons in active concert or participation with Defendant, as set forth above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

57. Defendant, is liable to the State for a civil penalty of ONE MILLION TWO HUNDRED EIGHTY-ONE THOUSAND FIFTY DOLLARS AND NO CENTS (\$1,281,050.00) for violations of the Tex. Health & Safety Code, the Tex. Water Code, TCEQ rules, and Permits and Orders issued by the TCEQ.

58. The State, therefore, shall have judgment against, in the amount of ONE MILLION TWO HUNDRED EIGHTY-ONE THOUSAND FIFTY DOLLARS AND NO CENTS (\$1,281,050.00), which constitutes Paragraphs 11 through 42, for 25,621 days of violations of the Tex. Health & Safety Code, the Tex. Water Code, TCEQ rules, and Permits and Orders issued by the TCEQ at \$50.00 per day.

59. Defendant, is liable to the State for administrative penalties of FIFTY-FIVE THOUSAND NINE HUNDRED TWENTY-ONE DOLLARS AND NO CENTS (\$55,921.00) for amounts owed under TCEQ Order No. 2007-0712-PWS-E (\$6,670.00 ordered administrative penalties), TCEQ Order No. 2008-1103-PWS-E (\$716.00 ordered administrative penalties), and TCEQ Order No. 2007-0449-MLM-E (\$48,535.00 ordered administrative penalties).

60. The State, therefore, shall have judgment against Defendant, for administrative penalties of FIFTY-FIVE THOUSAND NINE HUNDRED TWENTY-ONE DOLLARS AND NO CENTS (\$55,921.00) for the unpaid and owing administrative penalties.

61. The State shall also have judgment against Defendant, for its attorney's fees in the amount of TWENTY-SIX THOUSAND NINE HUNDRED SEVENTY-TWO DOLLARS AND FIFTY CENTS (\$26,972.50).

62. Should Defendant fail to make a timely payment of the amounts due and owing under this Default Judgment, the State shall also have judgment against the Defendant for the State's necessary and reasonable attorney's fees for proceedings to collect judgment in this case in the amount of TWO THOUSAND DOLLARS AND NO CENTS (\$2,000.00).

63. Should Defendant appeal this Default Judgment to the Court of Appeals, the State shall also have judgment against the appealing Defendant for the State's necessary and reasonable attorney's fees in the amount of FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00).

64. Should Defendant appeal this Default Judgment to the Texas Supreme Court,

the State shall also have judgment against the appealing Defendant for the State's necessary and reasonable attorney's fees to prepare a petition for review in the amount of EIGHT THOUSAND DOLLARS AND NO CENTS (\$8,000.00).

65. Should Defendant appeal this Default Judgment to the Texas Supreme Court, and should a petition for review be granted by the Texas Supreme Court, the State shall also have judgment against Defendant for the State's necessary and reasonable attorney's fees in the amount of FIFTEEN THOUSAND DOLLARS AND NO CENTS (\$15,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

66. Defendant is ordered to pay all costs of court incurred through the date of this Default Judgment and those court costs which may be incurred to collect this Default Judgment if necessary.

67. Defendant shall pay post-judgment interest on all amounts in this cause and continually thereafter at the legal rate of five percent from the date of this Default Judgment until paid in full, for all of which execution shall issue.

68. Defendant shall pay all amounts awarded in this Default Judgment within 30 days of the entry of this Default Judgment.

69. Payment for all amounts awarded in this Default Judgment shall be made by certified check or money order made payable to the State of Texas and shall bear the identifying number "A.G. # 093142115." Checks shall be delivered to Division Chief, Environmental Protection and Administrative Law Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

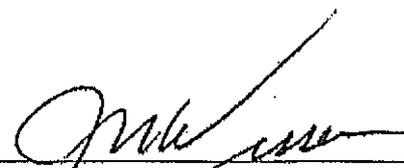
70. The effective date of this Default Judgment is the date it is signed by the Judge Presiding.

71. Execution shall issue for all monies awarded herein.

72. The State of Texas is allowed such writs and processes as may be necessary in the enforcement and collection of this Default Judgment.

73. All relief not expressly herein granted is denied. This is a final judgment. This Default Judgment finally disposes, without reservation, of all parties and all claims brought or that reasonably could have been brought.

SIGNED on December 20, 2010.



JUDGE PRESIDING

ENTRY REQUESTED BY:

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

BILL COBB
Deputy Attorney General for Civil Litigation

BARBARA B. DEANE
Chief, Environmental Protection and

Administrative Law Division

DAVID PREISTER

Chief, Environmental Protection Section



DAVID L. GREEN

State Bar No. 24037776

Assistant Attorney General

Environmental Protection and

Administrative Law Division

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

Tel: (512) 475-3205

Fax: (512) 320-0052

ATTORNEYS FOR THE STATE OF TEXAS

CAUSE NO. D-1-GV-10-001692

STATE OF TEXAS,

Plaintiff,

V.

MICHAEL L. O'NEILL, d/b/a
FRONTIER PARK RESORT and
MARINA,

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

353RD JUDICIAL DISTRICT

PLAINTIFF'S SOLDIERS' & SAILORS' AFFIDAVIT

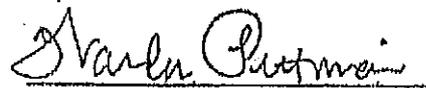
Before me, the undersigned notary, on this day personally appeared Wanda Pittman, a person whose identity is known to me. After I administered an oath to her, upon her oath she said:

1. I hereby certify that I am personally acquainted with the facts stated herein and that the foregoing is true and correct. My name is Wanda Pittman, and I am a legal assistant working under the direction of David Green, the Assistant Attorney General representing the State in this matter, *State of Texas v. Michael L. O'Neill, d/b/a Frontier Park Resort and Marina*, Cause No. D-1-GV-10-001692, in the 353rd District Court of Travis County, Texas, and am over the age of eighteen and competent to make this affidavit.

2. On November 17, 2010, I contacted the United States Department of Defense Manpower Data Center and requested a search of its information data banks. I provided the Department of Defense Manpower Data Center with the Social Security Number for Defendant Michael L. O'Neill. The results of that search indicate that Defendant Michael L. O'Neill is currently not on active military duty as to all branches of the United States military. A true and

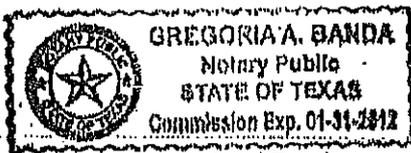


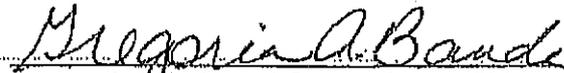
correct copy of the search results is attached hereto as Exhibit "A".



WANDA PITTMAN
Legal Assistant

17th, 2010. SWORN TO and SUBSCRIBED before me by Wanda Pittman on November




Notary Public in and for the State of Texas

Department of Defense Manpower Data Center

Nov-17-2010 13:05:57



Military Status Report
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
ONEILL	MICHAEL L	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenseink.mil" URL <http://www.defenseink.mil/fag/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects active duty status including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.



<https://www.dmdc.osd.mil/appj/scra/popreport.do>

11/17/2010

More Information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.
Report ID:U80KGEG8C2

No. D-1-GV-10-001692

STATE OF TEXAS,

Plaintiff,

v.

MICHAEL L. O'NEILL, d/b/a
FRONTIER PARK RESORT and
MARINA,

Defendant.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

353rd JUDICIAL DISTRICT

AFFIDAVIT FOR ATTORNEY'S FEES

BEFORE ME, the undersigned authority, on this day personally appeared David Green, whose identity is known to me. After I administered an oath to him, upon his oath he said:

1. My name is David Green and I am an Assistant Attorney General representing the State of Texas in the above captioned matter. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am a licensed attorney in the State of Texas and have been licensed since November 6, 2002.

3. I am generally familiar with the value of services of an attorney of my experience, reputation, and ability in Travis County and correspondingly value my time at \$225.00 per hour, which I believe to be a modest and reasonable rate. The rate for the legal assistants is \$85.00 per hour, which I believe to be a modest and reasonable rate.



4. I spent 115.25 hours working on this case. These hours comprised file review, legal research, drafting of pleadings, and conferring with agency personnel.

5. The amount of time for legal assistant services performed Wanda Pittman, a legal assistant employed by the Environmental Protection and Administrative Law Division of the Office of the Attorney General, working on the case totals 12.25 hours.

6. I consequently request that the court award attorney's fees in the amount of \$26,972.50, which I believe to be a modest and reasonable fee. These fees were reasonable and necessary for the services performed.

7. In the event that proceedings to collect judgment in this case become necessary, I believe that additional attorney's fees in the amount of \$2,000.00 would be a reasonable amount. In the event of an appeal of this judgment to the Court of Appeals, I believe that additional attorney's fees in the amount of \$5,000.00 would be a reasonable amount. In the event of a petition for review before the Texas Supreme Court by the Defendant of this judgment, I believe that additional attorney's fees in the amount of \$8,000.00 would be a reasonable amount. And, in the event that the Texas Supreme Court should grant review of the petition by the Defendant of this judgment, I believe that additional attorney's fees in the amount of \$15,000.00 would be a reasonable amount. I therefore request that the Court award attorney's fees in these amounts, which I believe to be modest and reasonable.



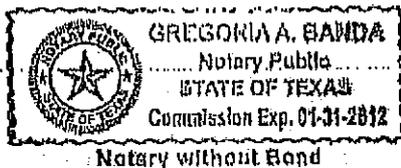
DAVID GREEN

Assistant Attorney General
State Bar No. 24037776

On this day personally appeared DAVID GREEN, known to me to be the person whose name is subscribed to the foregoing instrument, and after being duly sworn, acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on November 30th, 2010.

(Seal)



Megoria A. Banda
Notary Public in and for the State of Texas

My commission expires: 1/31/2012