

SUBCHAPTER J: ENFORCEMENT, SUPERVISION AND RECEIVERSHIP
§§291.140 - 291.147
Effective February 19, 2009

§291.140. Enforcement Action

If the executive director has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the executive director shall immediately:

- (1) Notify the utility's representative; and
- (2) Initiate enforcement action consistent with:
 - (A) This subchapter; and
 - (B) Procedural rules adopted by the commission.

Adopted January 13, 1999

Effective February 4, 1999

§291.141. Supervision of Certain Utilities.

- (a) The commission may place a utility under supervision where:
 - (1) the utility has exhibited gross or continuing mismanagement; or
 - (2) the utility has exhibited gross or continuing noncompliance with Chapter 13 of the Water Code or commission rules; or
 - (3) the utility has exhibited noncompliance with commission orders; and
 - (4) notice has been provided to the utility advising the utility of the proposed commission action, the reasons for the action and giving the utility an opportunity to request a hearing.
- (b) The commission may require the utility to abide by conditions and requirements, including but not limited to:
 - (1) management requirements;
 - (2) additional reporting requirements;
 - (3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets;

(4) a requirement that the utility place all or part of the utility's funds and revenues into an account in a financial institution approved by the executive director and restricting use of funds in that account to reasonable and necessary expenses;

(5) operational requirements;

(6) priority order of payments or obligations; and,

(7) limitation of payment for owner's or owner's family member's expenses or salaries or payments to affiliates.

(c) Any utility under supervision may be required to obtain the approval of the executive director before taking any action that may be restricted under subsection (b) of this section. If the commission in its order has required prior approval, any action or transaction which occurs without that approval may be voided by the executive director.

Adopted December 6, 1995

Effective January 10, 1996

§291.142. Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.

(a) The commission or the executive director, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that:

(1) has discontinued or abandoned operations or the provision of services; or

(2) is being referred to the attorney general for the appointment of a receiver under Texas Water Code, §13.412 for:

(A) having expressed an intent to abandon or abandoned operation of its facilities; or

(B) having violated a final order of the commission; or

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The commission or the executive director may appoint a person under this section by emergency order under Chapter 35 of this title (relating to Emergency and Temporary Order and Permits; Temporary Suspension or Amendment of Permit Conditions). A corporation may be appointed a temporary manager.

(c) Abandonment includes, but is not limited to:

(1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;

(2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;

(3) failure to adequately maintain facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;

(4) failure to provide customers adequate notice of a health hazard or potential health hazard;

(5) failure to secure an alternative available water supply during an outage;

(6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission or its customers with adequate information on how to contact the utility for normal business and emergency purposes.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

Adopted November 18, 1998

Effective December 10, 1998

§291.143. Operation of a Utility by a Temporary Manager.

(a) By emergency order under Texas Water Code, §5.507 and §13.4132, the commission or the executive director may appoint a person under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Suspension and Amendment of Permit Conditions) to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of services, or which has been or is being referred to the attorney general for the appointment of a receiver under Texas Water Code, §13.412.

(b) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The temporary manager shall serve a term of one year, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the executive director or the temporary manager and granted by the commission;

(3) the temporary manager is discharged from his responsibilities by the commission; or,

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the Attorney General.

(e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(h) The temporary manager shall report to the executive director on a monthly basis. This report shall include:

- (1) an income statement for the reporting period;
- (2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and
- (3) any other information required by the executive director.

(i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

Adopted November 18, 1998

Effective December 10, 1998

§291.144. Fines and Penalties.

(a) Fines and penalties collected under Texas Water Code, Chapter 13, from a retail public utility that is not a public utility in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.

(b) The commission shall provide a reasonable period for a retail public utility that takes over a nonfunctioning system to bring the nonfunctioning system into compliance with commission rules, during which the commission may not impose a penalty for any deficiency in the system that is present at the time the retail public utility takes over the nonfunctioning system. The commission must consult with the retail public utility before determining the period and may grant an extension of the period for good cause.

Adopted January 28, 2009

Effective February 19, 2009

§291.145. Preenforcement Threshold of Noncompliance.

(a) Definitions.

(1) **Operating Entity** - The governing body of a political subdivision, as defined by Texas Water Code, §17.921(3) and by the rules of the Texas Water Development Board (TWDB), responsible for providing water supply and sewer services and the management of its water and sewer system.

(2) **Preenforcement Threshold of Noncompliance** - The point at which the commission determines that an operating entity needs training because its financial, managerial, or technical capabilities are inadequate to ensure that operation of its water or wastewater facilities will meet requirements of the Economically Distressed Areas Program ((EDAP), Texas Water Code, Chapter 17, Subchapter M) or are inadequate to ensure its financial viability.

(b) The commission may evaluate whether the managerial, financial, and technical capabilities of an operating entity who is an applicant for, or recipient of, financial assistance from the EDAP are adequate to meet program requirements or to remain financially viable. The commission may also

evaluate whether an operating entity needs training if the operating entity has a history of compliance problems.

(c) The commission may notify the TWDB that the operating entity needs training if an inspection or other assessment of the water or sewer system by the TWDB or commission reveals that the governing body has failed to:

- (1) properly exercise its fiduciary duties;
- (2) properly manage its employees' work-related activities; or
- (3) ensure adequate operation of its physical facilities.

(d) The commission shall notify the TWDB when the commission assesses a penalty against an operating entity. If the commission assesses a penalty against an operating entity in an enforcement action, the enforcement order shall contain a provision requiring that the operating entity receive training as required by the TWDB.

Adopted July 10, 2002

Effective July 31, 2002

§291.146. Municipal Rates for Certain Recreational Vehicle Parks.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) **Nonsubmetered master metered utility service**--Potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.

(2) **Recreational vehicle**--Includes a:

(A) house trailer as that term is defined by Texas Transportation Code, §501.002; and

(B) towable recreational vehicle as that term is defined by Texas Transportation Code, §541.201.

(3) **Recreational vehicle park**--A commercial property on which service connections are made for recreational vehicle transient guest use and for which fees are paid at intervals of one day or longer.

(b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park shall determine the rates for that service on the same basis the utility uses to determine the rates for other commercial businesses, including hotels and motels, that serve transient customers and receive nonsubmetered master metered utility service from the utility.

(c) Notwithstanding any other provision of this chapter, the commission has jurisdiction to enforce this section.

Adopted August 9, 2006

Effective August 31, 2006

§291.147. Temporary Rates for Services Provided for a Nonfunctioning System.

(a) Notwithstanding other provisions of this chapter, upon sending written notice to the executive director, a retail public utility other than a municipally owned utility or a water and sewer utility subject to the original rate jurisdiction of a municipality that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider may immediately begin charging the customers of the nonfunctioning system a temporary rate to recover the reasonable costs incurred for interconnection or other costs incurred in making services available and any other reasonable costs incurred to bring the nonfunctioning system into compliance with commission rules.

(b) Notice of the temporary rate must be provided to the customers of the nonfunctioning system no later than the first bill which includes the temporary rates.

(c) Within 90 days of receiving notice of the temporary rate increase, the executive director will issue an order regarding the reasonableness of the temporary rates. In making the determination, the executive director will consider information submitted by the retail public utility taking over the provision of service, the customers of the nonfunctioning system, or any other affected person.

Adopted January 28, 2009

Effective February 19, 2009