

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

**June 30, 2022**

**TO:** All on the attached mailing list.

**RE:** Emergency Order to Compel the City of Liberty to Provide Continuous and Adequate Sewer Service to the City of Ames  
TCEQ Docket No. 2022-0763-UCR-E

Enclosed is a copy of an Emergency Order issued by the Commission regarding the above-referenced matter.

Pursuant to Texas Water Code § 5.504, the Commission will hold a hearing to consider whether to affirm, modify, or set aside the Emergency Order issued on June 29, 2022. Therefore, the Commission has scheduled this matter to be presented at the Commission's regular Agenda meeting on **August 24, 2022**. The Agenda begins at **9:30 a.m.** and will be held at TCEQ Park 35 Complex, 12100 Park 35 Circle, Building E, Room 201 S, Austin, Texas. Due to the ongoing pandemic, the agenda meeting may be held in person in Room 201S of Building E at the Commission's offices located at 12100 Park 35 Circle in Austin, Texas, virtually, or both in person and virtually. To confirm how the meeting will be held, please visit the Commissioners' Agenda webpage at:

[https://www.tceq.texas.gov/agency/decisions/agendas/comm/comm\\_agendas.html](https://www.tceq.texas.gov/agency/decisions/agendas/comm/comm_agendas.html) eight days before the Agenda.

Please be advised that, pursuant to 30 Texas Administrative Code § 35.25(c), at the August 24, 2022 Agenda meeting, an affected person may request an evidentiary hearing on the issuance of the Emergency Order.

The Commission's Office of General Counsel will provide an opportunity for the parties to file briefs regarding the Commission's issuance of the Emergency Order and whether to affirm, modify, or set it aside. If the parties wish to submit briefing, initial briefs must be filed by **Friday, July 15, 2022**; response briefs must be filed by **Friday, July 29, 2022**; and reply briefs must be filed by **Friday August 12, 2022**. Briefing should be filed with the Chief Clerk's Office no later than **5:00 p.m.** and may be filed electronically at [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or by filing an original and 7 copies with the Chief Clerk of the TCEQ. The parties must also mail a copy of the briefs to all other persons on the attached mailing list on the same day the briefs are submitted to the Office of Chief Clerk.

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Should you have any questions, please contact Mehgan Taack of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3313 or Dinniah Tadema, Assistant General Counsel at [Dinniah.Tadema@tceq.texas.gov](mailto:Dinniah.Tadema@tceq.texas.gov).

Sincerely,

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

Laurie Gharis  
Chief Clerk

Enclosure

MAILING LIST  
for  
Emergency Order to Compel the City of Liberty to Provide Continuous and Adequate  
Sewer Service to the City of Ames  
TCEQ Docket No. 2022-0763-UCR-E

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**TCEQ DOCKET NO. 2022-0763-UCR-E**

<b>IN THE MATTER OF THE</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>REQUEST BY THE CITY OF</b>	<b>§</b>	
<b>AMES UNDER TEXAS WATER</b>	<b>§</b>	
<b>CODE § 13.041 FOR AN</b>	<b>§</b>	
<b>EMERGENCY ORDER TO</b>	<b>§</b>	<b>COMMISSION ON</b>
<b>COMPEL THE CITY OF</b>	<b>§</b>	
<b>LIBERTY TO PROVIDE SEWER</b>	<b>§</b>	
<b>SERVICE IN LIBERTY COUNTY,</b>	<b>§</b>	
<b>TEXAS</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

## **EMERGENCY ORDER**

On June 29, 2022, the Texas Commission on Environmental Quality (Commission) considered the City of Ames's request for an Emergency Order under Texas Water Code (TWC) § 13.041(h) and 30 Texas Administrative Code (TAC) § 35.202. The parties made the subject of this Order are the City of Ames (Ames) and the City of Liberty (Liberty). The Commission has jurisdiction to consider this matter, and the following Findings of Fact and Conclusions of Law are appropriate:

### **FINDINGS OF FACT**

1. Liberty is a municipality and a retail public utility, as defined in 30 TAC § 291.3(14).
2. Liberty has obtained Certificate of Convenience and Necessity No. 20056 to provide sewer service.
3. Ames is a municipality that receives wastewater treatment services from Liberty pursuant to a contractual agreement issued on March 14, 2001.
4. Liberty informed Ames by letter dated January 5, 2022, that it would cease accepting wastewater flows on July 1, 2022.

5. On June 16, 2022, Ames filed a request for emergency order alleging that Ames has no means of obtaining sewer service other than from Liberty and requesting that the Commission issue an emergency order to compel Liberty to continue to provide sewer service to Ames pursuant to TWC § 13.041(h) and 30 TAC § 35.202.
6. As of June 29, 2022, Liberty had not rescinded its January 5, 2022, letter.
7. The City of Ames currently does not have an alternative in place to provide sewer service on or after July 1, 2022.
8. It is reasonably foreseeable that Liberty's suspension of Ames's sewer service would result in an unauthorized discharge of wastewater under TWC § 26.121.
9. Liberty is located in close proximity to Ames and is capable of providing sewer to Ames through existing lines.
10. Liberty should be compelled to continue to provide sewer service to Ames that complies with all statutory and regulatory requirements of the Commission to ensure the protection of the environment in accordance with TWC Chapter 26, TWC § 13.041(h)(1), and 30 TAC Chapters 35 and 291 of TCEQ's rules for 120 days.

#### **CONCLUSIONS OF LAW**

1. The Commission may issue an emergency order under TWC § 13.041(h)(1) to compel a retail public utility that has obtained a certificate of public convenience and necessity to provide sewer service that complies with all statutory and regulatory requirements of the Commission if necessary to ensure environmental protection.
2. Liberty is a retail public utility as defined in 30 TAC § 291.3(14) and holds a sewer certificate of convenience and necessity.
3. An unauthorized discharge of wastewater under TWC § 26.121 and hazard to the environment is likely to occur if Liberty suspends Ames's sewer service on July 1, 2022, due to Ames not having alternative sewer service in place. Liberty has notified Ames that the discontinuance of service will occur on July 1, 2022.
4. The Commission may therefore compel Liberty to continue to provide sewer service to Ames pursuant to Texas Water Code § 13.041(h)(1) to ensure the protection of the environment.

#### **NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:**

1. This Order shall become final and effective on the date of signature;

2. Liberty shall continue to provide to Ames continuous and adequate sewer service that complies with TWC Chapter 26, TWC § 13.041(h)(1), and 30 TAC Chapters 35 and 291 of TCEQ's rules;
3. This Order shall expire in 120 days, unless extended;
4. Pursuant to TWC § 5.504, the Commission hereby sets a hearing to consider whether to affirm, modify or set aside this Emergency Order at its regular Agenda meeting on **August 24, 2022, at 9:30 a.m.**, at TCEQ Park 35 Complex, 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas;
5. The provisions of this Order shall apply to and be binding upon Liberty and Ames. Liberty and Ames shall give notice of this Order to personnel who maintain day-to-day control over the operations referenced in this Order;
6. The Chief Clerk of the Commission shall mail a copy of this Order to all parties; and
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this Order.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY



For the Commission

6/29/22  
Date