

GREGORY D. WILLIAMS
ATTORNEY AT LAW
HIGHWAY 5 AT 5-33
P. O. BOX 431
SUNRISE BEACH, MO 65079

573 / 374-8761

FAX 573 / 374-4432

November 20, 2001

Hon. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Mo 65102

FILED²
NOV 26 2001

Attn: Filing Desk

Missouri Public
Service Commission

Re: Environmental Utilities, LLC
WA-2002-65

Dear Judge Roberts:


Please find enclosed for filing with the Commission the original and 9 copies of the following:

1. Motion to Set Aside Order Granting Application to Hancock Construction Company to Intervene Out of Time.

An additional copy of the same is also enclosed to be stamped "filed" and returned to me in the enclosed envelop.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely yours,


Gregory D. Williams

cc: Victoria Kizito
M. Ruth O'Neill
Thomas E. Loraine

FILED

NOV 26 2001

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI
Public Service Commission

In the matter of the application of Environmental Utilities, LLC)
for permission, approval, and a certificate of convenience and)
necessity authorizing it to construct, install, own, operate,) Case No. WA-2002-65
control, manage and maintain a water system for the)
public located in unincorporated portions of Camden County,)
Missouri (Golden Glade Subdivision).)

**MOTION TO SET ASIDE ORDER GRANTING APPLICATION
OF HANCOCK CONSTRUCTION COMPANY
TO INTERVENE OUT OF TIME**

COMES NOW Environmental Utilities, LLC and moves the Commission for its Order setting aside its Order herein of November 16, 2001 granting the Application of Hancock Construction Company to Intervene herein, and in support thereof states:

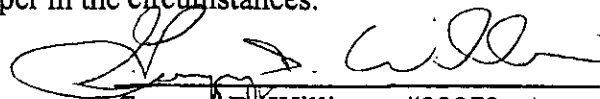
1. Environmental Utilities, LLC (the "Company") was not served with a copy of the Application to Intervene filed herein by Hancock Construction Company ("Hancock") on or about November 1, 2001 when the same was filed with the Commission.
2. Counsel for the Company first became aware of said Application to Intervene on November 14, 2001 when the same was posted as an item on the Commission's Agenda for November 15, 2001.
3. Counsel for the Company contacted counsel for Hancock on November 14, 2001, and received a faxed copy of said Application, together with the cover letter attached hereto as Exhibit A. Said cover letter alleges that the Application to Intervene was mailed to counsel for the Company on November 8, 2001, although the Application to Intervene was filed on November 1, 2001. No explanation for the 1 week delay in the purported mailing of said Application to Intervene is provided. Counsel for the Company did not receive said Application to Intervene by mail after November 8, 2001. Said fax transmission contained a Certificate of Service dated November 8, 2001 for pleadings in

Case CV101-008CC before the Circuit Court of Camden County, Missouri as proof that the Application to Intervene was mailed to counsel for the Company on November 8, 2001. Counsel for the Company did receive the documents described in said certificate of service, i.e. Plaintiff's Request for Production of Documents and Other Things to Defendant Osage Water Company after November 8, 2001. A copy of said Certificate of Service is attached hereto as Exhibit B.

4. Counsel for the Company has been advised by M. Ruth O'Neill of the Office of Public Counsel that she did was not served with a copy of said Application to Intervene on or about November 1, 2001. The Application to Intervene does not state that it was mailed or hand delivered to Victoria Kizito, counsel for the Staff of the Missouri Public Service Commission.
5. Counsel for the Company has prepared and filed with the Commission the Company's Response to the Application to Intervene, but due to time for mailing, the same was not filed with the Commission until after the Commission had entered its Order granting the Application to Intervene.
6. The Application to Intervene omits material relevant facts pertaining to the relationship between Hancock and Osage Water Company, including, but not limited to, the fact that the principal of Hancock, David L. Hancock, is the defendant in Case CV101-665CC before the Circuit Court of Camden County, Missouri, in which it is alleged that said David L. Hancock, acting on behalf of Hancock, made false and libelous statements in writing to the Missouri Department of Natural Resources concerning Osage Water Company. A copy of the Petition in said cause of action is attached hereto as Exhibit C.

7. That in order to afford due process to the Company, the Commission's Staff, and to the Office of Public Counsel, reasonable notice of the Application to Intervene together with an opportunity to respond thereto prior to the approval thereof by the Commission is required.
8. That it is reasonable under the circumstances to set aside the Order Granting the Application to Intervene in that the same was improvidently granted due to the failure of Hancock to properly serve the same on counsel of record, for lack of notice to the counsel of record for the parties herein, and for the failure to include all material relevant facts relating to the relationship between Hancock and Osage Water Company.

WHEREFORE, the Company prays for an Order of the Commission setting aside the Order Granting Application to Intervene Out of Time, and for such other and further relief as the Commission may deem just and proper in the circumstances.



Gregory D. Williams #32272
Highway 5 at Lake Road 5-32
P.O. Box 431
Sunrise Beach, MO 65079
(573) 374-8761


CERTIFICATE OF SERVICE

I, Gregory D. Williams, do hereby certify that a true copy of the foregoing was on this 21st day of November 2001, mailed, postage prepaid, to the following:

M. Ruth O'Neill
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Victoria Kizito
General Counsel, Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Thomas E. Loraine
4075 Highway 54, Suite 300
Osage Beach, MO 65065



Gregory D. Williams

Attorneys at Law
4075 Highway 54, Suite 300
Osage Beach, Missouri 65065

Thomas E. Loraine
Clara M. Weppner, Paralegal

Tel: (573) 348-8909
Fax: (573) 348-8920

FACSIMILE TRANSMITTAL FORM

Date Transmitted: 11-14-01
Fax No. Transmitted To: 374-4432
Fax No. Transmitted From: (573) 348-8920
Pages (Including this one): _____
Attention: Greg Williams
From: Thomas Loraine
In Re: WA-2002-65

Special Instructions: _____

If you did not receive all of the pages in good condition, please notify sender at (573) 348-8909.

NOTICE OF CONFIDENTIALITY

The information contained in this communication is confidential and may be Attorney-Client privileged. It is intended only for the use of the person to whom it is addressed. Unauthorized use or disclosure is strictly prohibited and may be unlawful. If you have received this communication in error, please contact us immediately at the above number.

1 The original will be sent by regular mail.

LORAIN & ASSOCIATES

Attorneys at Law
4075 Highway 54, Suite 300
Osage Beach, Missouri 65065

Thomas E. Loraine
Clara M. Weppner, Paralegal

Tel: (573) 348-8909
Fax: (573) 348-8920

November 14, 2001

VIA FAX NO. (573) 374-4432

Exhibit A
Page 1

Mr. Greg Williams
Attorney at Law
Post Office Box 431
Sunrise Beach, Missouri 65079

RE: Case No. WA-2002-65

Dear Mr. Williams:

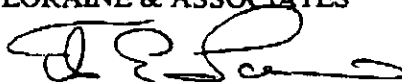
Enclosed please find our application To Intervene Out of Time for the above-referenced case that was previously mailed to you on November 8, 2001. I understand that you never received this mail. Our mail register shows that the package was mailed to you on that day.

I apologize if you never received it. I sincerely hope this has not caused you any inconvenience or prejudice. I am enclosing a copy of my legal Secretary's Certificate of Service concerning this mailing.

I can do nothing about the inadequacies of the mail system, I am prepared to rely on our internal system to advise you that the matter was mailed. Never the less, I would agree to any joint extension of time that you feel necessary to allow adequate preparation and submission to the Commission. Please prepare said document and forward it by fax and I will execute same.

Very truly yours,

LORAINE & ASSOCIATES



Thomas E. Loraine

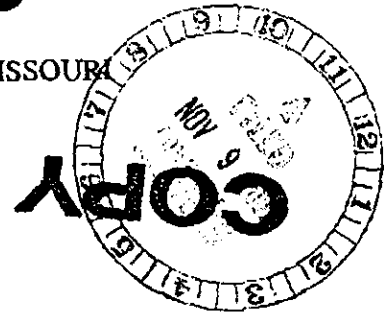
TEL/jw

cc: David Hancock
Commission

Civil Litigation\Hancock\Williams lt11-14-01

Exhibit A
Page 2

IN THE CIRCUIT COURT OF CAMDEN COUNTY MISSOURI
ASSOCIATE DIVISION



DAVID L. HANCOCK,

Plaintiff,

vs

OSAGE WATER COMPANY,

Defendant.

Case #: CV101-008CC

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS AND OTHER THINGS TO DEFENDANT OSAGE WATER COMPANY were mailed, postage prepaid, this 8th day of November, 2001, to Gregory D. Williams, Highway 5 at Lake Road 5-32, P.O. Box 431, Sunrise Beach, MO. 65079, attorney for Defendant, Osage Water Company.

Respectfully submitted,

LORAINE & ASSOCIATES

Thomas E. Loraine
Thomas E. Loraine #22206
4075 Highway 54, Suite 300
Osage Beach, MO 65065
(573) 348-8909

ATTORNEY FOR PLAINTIFF

Exhibit B

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

OSAGE WATER COMPANY,

Plaintiff,

vs.

DAVID L. HANCOCK,

Defendant.

Case No. CV 101-665 CC

PETITION

LIBEL

COMES NOW the Plaintiff in the above captioned matter, and for its cause of action against the Defendant herein states:

1. Plaintiff is a Missouri Corporation in good standing doing business in Camden County, Missouri.
2. Defendant is an individual residing in Camden County, Missouri.
3. Plaintiff is engaged in the water and sewer utility business in Camden County, Missouri, and in connection with said business constructs water and sewer utility systems for its own use.
4. Defendant is an officer, shareholder, and director of Hancock Construction Co., a Missouri Corporation engaged in the business of constructing water and sewer utility systems.
5. On or about September 23, 1999 Defendant wrote a letter to the Missouri Department of Natural Resources, Public Drinking Water Program, a copy of which is attached hereto as Exhibit A.
6. Said letter contained false statements, including specifically:
 - a. That Plaintiff constructed water and sewer lines in the same trench in violation of the regulations of the Missouri Department of Natural Resources.

- b. That Plaintiff constructed water and sewer lines with less than a 10-foot horizontal separation in violation of the regulations of the Missouri Department of Natural Resources.
 - c. That Plaintiff's water system serving Cimarron Bay Subdivision was without water pressure and had heavy chlorination during Labor Day Weekend, 1999.
 - d. That Plaintiff engaged in fraudulent practices with respect to the provision of water and sewer utility services.
 - e. That Plaintiff failed to comply with regulations of the Missouri Department of Natural Resources.
 - f. That Plaintiff failed to correct Notices of Violation issued by the Missouri Department of Natural Resources.
7. That at the time of writing said letter Defendant had failed and refused to make payment for water and sewer utility services he was receiving from Plaintiff in its Cimarron Bay Service Area.
8. That said letter was written by Defendant with the intent and for the purpose of causing damage to the reputation of Plaintiff with the Missouri Department of Natural Resources.
9. That said letter was received and read by employees of the Missouri Department of Natural Resources.
10. That as a result of said letter the Missouri Department of Natural Resources commenced an investigation of the construction practices of Plaintiff with respect to its water and sewer systems serving its Cimarron Bay Service Area.

11. That as a result of said letter Plaintiff was required to file additional engineering studies and reports with the Missouri Department of Natural Resources with respect to its construction practices in its Cimarron Bay Service Area.
12. That Plaintiff incurred expenses in excess of \$10,000 in preparing and filing said additional engineering studies.
13. That as a result of said letter Plaintiff was delayed in the completion of construction of its water and sewer system extensions and expansions serving Harbour Bay Condominium, resulting in additional costs and expenses to Plaintiff in excess of Fifty Thousand Dollars.
14. That as a result of said letter Plaintiff was required to employ an attorney to respond to inquiries and complaints initiated by the Missouri Department of Natural Resources.
15. That Plaintiff incurred attorney's fees in excess of \$10,000 in responding to said inquiries and complaints initiated by the Missouri Department of Natural Resources.
16. That Plaintiff was required by the Missouri Department of Natural Resources to re-excavate portions of its water and sewer lines serving the Harbour Bay Condominium project to verify that the same were not installed in the same trench, at a cost and expense to Plaintiff in excess of \$2,500.
17. That Defendant wrote said letter with the intent and for the purpose of causing financial harm and damage to Plaintiff.
18. That Defendant wrote said letter with actual knowledge that the allegations contained therein were false.
19. That Defendant wrote said letter with the intent and for the purpose of damaging the reputation of Plaintiff.

20. That this is an appropriate case in which to impose exemplary damages on the Defendant in order to deter the Defendant, and others similarly situated, from like conduct in the future.

21. That this is an appropriate case in which to award Plaintiff recovery of its attorney's fees herein incurred in order to deter the Defendant, and others similarly situated, from like conduct in the future.

WHEREFORE, Plaintiff prays for Judgment against Defendant in the sum of \$72,500 in actual damages, together with exemplary damages in a sum sufficient to deter the Defendant and others similarly situated from like conduct in the future, together with its costs and attorneys fees herein incurred.

A handwritten signature in black ink, appearing to read "Gregory D. Williams", is written over a horizontal line.

Gregory D. Williams #32272
Highway 5 at Lake Road 5-32
P.O. Box 431
Sunrise Beach, MO 65079
(573) 374-8761

Attorney for Plaintiff

David L. Hancock
HCR 77 Box 241-10
Sunrise Beach, MO 65079
573-374-6511

September 23, 1999

Mr. John MacEachen
Public Drinking Water Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

Dear Sir:

I am a resident of Cimmaron Bay Subdivision, in Camden County, Missouri. Osage Water Co. has control over the sewer and water systems here.

I have recently witnessed the installation of sewer and water lines, from a condo project, in the same trench, and less than 10' horizontal separation. Also, the sewer line passes within 50' of the well.

On Labor Day weekend, I was without water pressure numerous times, and also had heavy chlorination.

I am very concerned for my families well being, due to improper installation procedures, which could contaminate the well.

I believe there has been no pressure testing after installation of these lines, and no monitoring of installations by your office of this site, or any other site of Osage Water Co.

I have been a sewer and water contractor for over 30 years. I have followed all engineering guidelines from project engineers, based upon DNR guidelines.

Most contractors, builders, and developers try their best to meet your guidelines and spend millions of dollars annually to comply, or be threatened by fines or possible imprisonment by DNR.

I have spoken to numerous other people in the lake area that have had similar encounters with Osage Water Co. ie. not doing what they promised: Fire protection, new well, increased water storage, additional sewage treatment, etc. Promises not kept many, many times to many people, smells like fraudulent practices to me, yet OWC continues to seek larger territories, accumulate more water and sewer systems, without regard to your regulations and or the public need.

RECEIVED
SEP 24 1999
PUBLIC DRINKING WATER
PROGRAM

David L. Hancock
HCR 77 Box 241-10
Sunrise Beach, MO 65079
573-374-6511

I believe the DNR has failed to respond to the public need of safe drinking water.

I also know for a fact there are numerous NOV's that have not been corrected as far back as 1996. Osage Water Co. continues to do as they please, and DNR and the PSC seem to be assisting them in their endeavors!

I suppose the Attorney General's office would not even look at this case due to the attorney brotherhood thing.

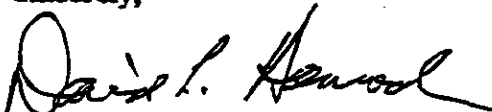
I know for a fact that DNR and the PSC have had many complaints on OWC.

I also believe you are very, very slow in responding to these complaints, putting the public's health last instead of first where it should be.

I am putting you on notice today, I will pursue every avenue possible to stop the negligence of your departments by media, attorneys, or whatever, if you do not immediately respond with some FIRM action to curtail this type of thing in this community.

You guys put on a good face for the media, but I believe you are sitting on your butts.

Sincerely,



David L. Hancock