

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Gerald and Joanne Reiersen	)	
	)	
Complainants,	)	
	)	
v.	)	<b><u>Case No. SC-2005-0083</u></b>
	)	
Kenneth Jaeger and Blue Lagoon Sewer	)	
Corp.,	)	
	)	
Respondents.	)	

**OFFICE OF THE PUBLIC COUNSEL’S REQUEST FOR THE  
COMMISSION TO ISSUE ITS DECISION IN THIS CASE**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Request for the Commission to Issue its Decision in this Case states as follows:

1. This complaint case was opened on October 4, 2004 and has been pending before the Missouri Public Service Commission (Commission) for more than three years and eight months.
2. On October 30, 2007 the Commission issued an order noting that this case has been submitted and briefed but stating that the Commission was aware of pending civil litigation in the Circuit Court of Ralls County, Missouri that may resolve many, if not all, of the issues in this complaint. The Commission ordered the Staff of the Public Service Commission (Staff) and Respondents to file a status report within 60 days updating the Commission on the status of the pending Ralls County Circuit Court case against Ken Jaeger.
3. On December 31, 2007, a Joint Status Report of Staff and Respondents (Joint Status Report) was filed. The Joint Status Report stated that on December 13, 2007, Respondent Jaeger and Blue Lagoon, LLC (a newly formed corporation, of which Alvin Thompson is the sole member) initiated Case No. SM-2008-0188 seeking authority from the Commission for Jaeger to

transfer the Blue Lagoon wastewater facilities to Blue Lagoon, LLC; to grant Blue Lagoon, LLC a certificate of convenience and necessity; and to allow Blue Lagoon, LLC to charge certain rates to its customers. The Joint Status Report also stated that Respondent Jaeger and Blue Lagoon, LLC intend, by this application, that Blue Lagoon, LLC will obtain from the Commission a certificate of convenience and necessity, as required by an Order issued by the Ralls County Circuit Court on December 17, 2007.

4. Since the filing of the Joint Status Report, many things have occurred, none of which have brought a resolution to the issues in this case: Respondent Ken Jaeger filed for bankruptcy in the state of Texas; Case No. SM-2008-0188 has been dismissed per a motion to dismiss application filed by Blue Lagoon, LLC in which it was stated that the circumstances of Ken Jaeger's filing bankruptcy puts in jeopardy Blue Lagoon, LLC's ability to provide the services stated in the application; Public Counsel opened Case No. SO-2008-0358 in which Public Counsel filed a motion for appointment of an interim receiver and requested an order to General Counsel to petition the Circuit Court for the appointment of a receiver; and on April 22, 2008, the Ralls County Circuit Court issued an Order of Commitment for Ken Jaeger (See Attached) indicating that he remains in Contempt of that court.

5. Public Counsel suggests that the Complainants have a due process right to have this case brought to a final resolution. Public Counsel also states its belief that a resolution in this case will not adversely affect its request for a receiver pending before this Commission in Case No. SO-2008-0358.

**Explanation of how the automatic stay provisions of the United States  
Bankruptcy Code may affect the Commission's actions in this case**

6. Under the Bankruptcy Code, at 11 U.S.C. §362(a), the filing of a bankruptcy petition operates as an automatic stay on the commencement or continuation of judicial, administrative or

other actions or proceedings against the debtor. However, under 11 U.S.C. §362(b)(4), an exception is made for an action or proceeding by a governmental unit to enforce that governmental unit's police and regulatory power. This exception has been interpreted to apply to administrative agency actions such as those of the Commission. *Eddleman v. United States Department of Labor*, 923 F.2d 782, 790 (10<sup>th</sup> Cir. 1991).

7. Courts look to the legislative history of the Bankruptcy Reform Act of 1978 for an explanation of the meaning of 11 U.S.C. §362(b)(4). *In re Commonwealth Companies, Inc. and Commonwealth Electric Co., Inc.*, 913 F.2d 518, 522 (8<sup>th</sup> Circ. 1990). In regard to 11 U.S.C. §362(b)(4), the Senate and House Committee Reports state:

Paragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers. Thus where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.

*Id.*, citing S. Rep. No. 989, 95<sup>th</sup> Cong., 2d Sess. 52, reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5838; H.R. Rep. No. 595, 95<sup>th</sup> Cong., 2d Sess. 343 (1977), reprinted in 1978 U.S. Code Cong. & Admin. News 5693, 6299.

8. Furthermore, the court in *Eddleman* developed a two-prong test to determine whether an agency action fits within the exception. *Eddleman*, 923 F.2d at 791. The two-prong test states that if the governmental action is to protect a "pecuniary interest," then the exception does not apply and the automatic stay is in place. However, if the governmental action is aimed at effectuating public policy, then the action falls under the exception and there is no stay on those proceedings.

9. This case is aimed at effectuating the public policies of environmental protection, consumer protection and safety. Public sewer systems are subject to the jurisdiction of this

Commission and customers of public sewer systems must be provided with safe and adequate sewer service at fair and reasonable prices. Inherent in the requirement for safe and adequate service is the condition that the public sewer system must meet all applicable environmental regulations. Therefore, Public Counsel states that since this case involves a proceeding of a governmental unit to enforce that governmental unit's police and regulatory power to effectuate public policy, the actions of the Commission in this case fall under the exception to the automatic stay.

WHEREFORE, Public Counsel requests that the Commission issue its decision in this case.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Christina L. Baker**

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 12<sup>th</sup> day of June 2008:

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/s/ **Christina L. Baker**

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IN THE CIRCUIT COURT OF RALLS COUNTY, MISSOURI

STATE OF MISSOURI ex rel.  
JEREMIAH W. (JAY) NIXON, the  
MISSOURI CLEAN WATER  
COMMISSION and the  
MISSOURI DEPARTMENT  
OF  
NATURAL RESOURCES

Plaintiff,

v.

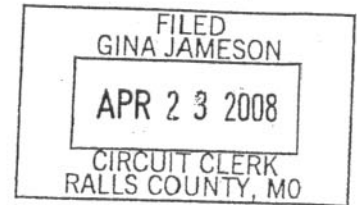
KEN JAEGER,

Defendant.

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MO. ATTORNEY GENERAL



Case No. CV805-12CC

Order #08-WTOA-4

ORDER OF COMMITMENT

TO THE SHERIFF OF RALLS COUNTY, MO:

WHEREAS, On January 19, 2005, a Petition for Preliminary Injunction, Permanent Injunction and Civil Penalties was filed in the above action. A Preliminary Injunction Hearing was set for May 3, 2005 and the Defendant appeared through his attorney of record. On May 3, 2005, a Judgment and Order of Preliminary Injunction ("Judgment and Order") by Consent was entered against defendant Ken Jaeger ordering defendant to comply with the Judgment, and the Missouri Clean Water Law, Chapter 644, RSMo and the regulations adopted pursuant thereto. The Judgment and Order also required that the defendant, on or before September 30 of each year, to land apply the contents of the lagoon to the minimum operating level of two feet from the bottom of the lagoon and notify the Department when these levels have been reached. The Judgment and Order also required Defendant Jaeger to maintain and provide records to the Department showing the dates and the times of land application, the amount and rate of irrigation water and the monitoring activities conducted. Furthermore, the Judgment and Order required

Defendant Jaeger to operate and maintain the lagoon so as to prevent the content of the lagoon from overtopping the lagoon berms.

WHEREAS, said Judgment and Order was in full force and effect on May 3, 2005, and,

WHEREAS, on March 13, 2006, Plaintiff filed a Motion for Contempt against Ken Jaeger alleging that defendant had failed and refused to comply with several terms of the Judgment and Order, and

WHEREAS, on March 21, 2006, an order was issued by this Court ordering defendant to appear and show cause why he should not be held in contempt of court and,

WHEREAS, on April 11, 2006, Defendant with counsel and Plaintiff agreed, and this court entered a Judgment of Contempt against Defendant Ken Jaeger,

WHEREAS the April 11, 2006, Judgment of Contempt found among other things, that Defendant Ken Jaeger failed to comply with the Judgment and Order in that:

- A. Defendant failed to land apply the contents of the lagoon to a minimum operating level of two feet from the bottom of the lagoon and notify the Department when these levels had been reached on or before September 30, 2005;
- B. Defendant failed to maintain and provide records to the Department showing the dates and times of the land application, the amount and rate of irrigation water and the monitoring activities conducted;
- C. Defendant was capable of complying with all requirements of the May 3, 2005, Judgment and Order.

WHEREAS, the April 11, 2006, Judgment of Contempt further ordered that Defendant Ken Jaeger bring his Lost Valley Subdivision into compliance with the Missouri Clean Water Law, Chapter 644, RSMo and the regulations promulgated thereto in the following manner:

A. Defendant Ken Jaeger was ordered to immediately comply with all aspects of the May 3, 2005 Judgment and Order, including, but not limited to:

1. Operating and maintaining the lagoon so as to prevent the contents of the lagoon from overtopping the lagoon berms;
2. Maintaining and providing records to the Department's Northeast Regional office showing the dates and times of land application, the amount and rate of irrigation water, and the monitoring activities conducted; and
3. On or before September 30 of each year, land apply the contents of the lagoon to the minimum operating level of two feet from the bottom of the lagoon and notify the Department of Natural Resources when these levels have been reached.

B. Defendant Ken Jaeger was ordered to appear before this Court on July 5, 2006 1:30 PM to report on his compliance with this Judgment of Contempt.

WHEREAS, Defendant had notice of the April 11, 2006 Judgment of Contempt, by being personally present and participating in the execution of the agreed Judgment of Contempt, and, this court scheduled the matter on July 5, 2006, at which time Defendant appeared with counsel for the purpose of determining if he complied with the terms of the May 3, 2005, Judgment and Order and the April 6, 2006, Judgment of Contempt, and



WHEREAS, on July 10, 2006, this Court found, and Defendant Ken Jaeger admitted, that he failed to comply with the May 3, 2005 Judgment and Order against Defendant Ken Jaeger and the April 11, 2006 Judgment of Contempt and Order and Adjudged ("Second Judgment of Contempt") and ordered that Defendant Ken Jaeger be again found in contempt of this Court due to his failure to comply with this Court's May 3, 2005 Judgment and Order and this Court's April 11, 2006, Judgment of Contempt against Defendant Ken Jaeger, and

WHEREAS, this Court further ordered that defendant Jaeger bring his Lost Valley Subdivision into compliance with the Missouri Clean Water Law, Chapter 644, RSMo, and regulations promulgated thereto, in the following manner:

A. Defendant Ken Jaeger was ordered to immediately comply with all aspects of the May 3, 2005, Judgment and the April 11, 2005, Judgment of Contempt against Defendant Ken Jaeger. The May 3, 2005, Judgment and Order and the April 11, 2006, Judgment of Contempt remained in full force and effect, including but not limited to:

1. Operating and maintaining the lagoon so as to prevent the contents of the lagoon from overtopping the lagoon berm;
2. Maintaining and providing records to the Department's Northeast Regional office showing the dates and times of land application, the amount and rate of irrigation water, and the monitoring activities conducted; and
3. On or before September 30 of each year, land apply the contents of the lagoon to the minimum operating level of two feet from the bottom of the lagoon and notifying the Department of Natural Resources when these levels have been reached.

B. The court ordered Defendant Ken Jaeger to appear before this court on September 6, 2006, at 1:30 to report on his compliance with his Second Judgment of Contempt. The Second Judgment of Contempt notified Ken Jaeger that if he failed to comply with the Second Judgment of Contempt, the Court would consider utilizing any and all extraordinary remedies so as to achieve compliance with the Judgment and Orders of this Court, including, but not limited to, incarcerating Defendant Ken Jaeger, and,

WHEREAS, Defendant had notice of July 10, 2006 Second Judgment of Contempt, by being personally present with counsel and participating in the execution of the agreed Second Judgment of Contempt,

WHEREAS, on September 6, 2006, November 7, 2006, January 2, 2007, March 6, 2007, May 1, 2007, June 24, 2007, August 1, 2007, December 4, 2007, and March 4, 2008, this Court held hearings to determine if the defendant was in compliance with the previous judgments and orders of this Court and issued further orders ("further Orders") against defendant Jaeger to remain in compliance with the Missouri Clean Water Law and relevant regulations and all previous orders of this court, including but not limited to:

- A. Operating and maintaining the lagoon so as to prevent the contents of the lagoon from overtopping the lagoon berm;
- B. Maintaining and providing records to the Department's Northeast Regional office showing the dates and times of land application, the amount and rate of irrigation water, and the monitoring activities conducted; and
- C. On or before September 30 of each year, land apply the contents of the lagoon to the minimum operating level of two feet from the bottom of the

lagoon and notifying the Department of Natural Resources when these levels have been reached.

WHEREAS, this Court calls this matter in open court to determine if Defendant has complied with the May 3, 2005 Judgment and Order, the April 11, 2006 Judgment of Contempt, the July 10, 2006 Second Judgment of Contempt, and further orders against Defendant Ken Jaeger. Evidence was presented. This Court finds that Defendant Jaeger, with full and complete knowledge of the May 3, 2005 Judgment and Order, the April 11, 2006 Judgment of Contempt, the July 10, 2006 Second Judgment of Contempt, and further orders has willfully failed and refused to comply with the May 3, 2005 Judgment and Order, the April 11, 2006 Judgment of Contempt, the July 10, 2005 Second Judgment of Contempt, and further orders in that Defendant Ken Jaeger has failed to:

- A. Operate and maintain the lagoon so as to prevent the contents of the lagoon from overtopping the lagoon berms;
- B. Maintain and provide records to the Department's Northeast Regional office showing the dates and time of land application, the amount and rate of irrigation water, and the monitoring activities conducted;
- C. On or before September 30 of each year, land apply the contents of the lagoon to a minimum operating level of two feet from the bottom of the lagoon and notify the Department when this level is reached; and
- D. Prevent his wastewater collection system serving Lost Valley Subdivision from violating the Clean Water Law, Chapter 644 RSMo. by allowing the wastewater in the collection lines to discharge to water of the State.

WHEREAS, This court finds that the Defendant has the ability to perform these acts, and

WHEREAS, Defendant is hereby judged guilty of Contempt of Court because of his said refusal to comply with the May 3, 2005 Judgment and Order, the April 11, 2006 Judgment of

Contempt, the July 10, 2006 Second Judgment of Contempt, and further Orders of this Court in that:

- A. Defendant has failed to operate and maintain the lagoon serving Lost Valley Subdivision so as to prevent the contents of the lagoon from overtopping the lagoon berms;
- B. Defendant has failed to maintain and provide records to the Department's Northeast Regional office showing the dates and time of land application, the amount and rate of irrigation water, and the monitoring activities conducted;
- C. Defendant failed to, on or about September 30 of each year, land apply the contents of the lagoon to a minimum operating level of two feet from the bottom of the lagoon and notify the Department when this level is reached; and
- D. Defendant has violated the Missouri Clean Water Law, Chapter 644 and the regulations adopted pursuant thereto by allowing the wastewater collections system serving his Lost Valley Subdivision to discharge wastewater to waters of the State without a valid Missouri State Operating Permit.

Now, therefore, you are commanded to attach Ken Jaeger and commit him to the County Jail of Ralls County, Missouri, until such time as he has purged himself of Contempt by:

1. Fixing the lift station that is causing the collection system of the Lost Valley Subdivision to discharge wastewater into waters of the State. Defendant shall install two operational pumps in said lift station and secure the cover to said lift station with a lock.
2. Pumping and hauling the wastewater contained in the lagoon serving Lost Valley Subdivision to a permitted wastewater treatment plant until the wastewater in the lagoon is two feet from the top of the lowest point of the emergency spillway.

*22nd*  
DATED THIS *22nd* DAY OF APRIL, 2008.



*Robert M. Clayton*  
HONORABLE ROBERT M. CLAYTON,  
Circuit Judge.