

**From:** "jerry reierson" <jrjrfishing@yahoo.com>  
**To:** "bob" <rmhldh@msn.com>  
**Sent:** Tuesday, February 27, 2007 7:03 AM  
**Subject:** PSC TESTIMONY

**FILED**<sup>2</sup>

MAR 08 2007

Missouri Public  
Service Commission

**DIRECT TESTIMONY  
OF  
GERALD L. REIERSON  
LOST VALLEY SUBDIVISION  
CASE NO. SC-2005-0083**

**Monroe City, Missouri  
February 2007**

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

In the Matter of Gerald and Joanne Reiersen, Complainant,

vs.

Kenneth Jaeger and Blue Lagoon Sewer Corp., Respondent.

)  
)  
)

Case No. SC-2005-0083

**AFFIDAVIT OF GERALD L. REIERSON**

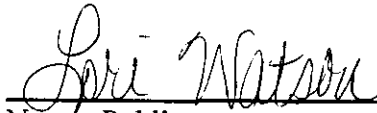
STATE OF MISSOURI       )  
                                  *monroe*       ) ss  
COUNTY OF ~~RALLS~~       )

Gerald L. Reiersen, of lawful age, on his oath states: that he has participated in the preparation of the following Direct Testimony, in question and answer form, consisting of 3 pages, to be presented in the above case; that the answers in the following Direct Testimony were given by him, that he has knowledge of the matters set forth in such answers; and that such answers are true to the best of his knowledge and belief.



Gerald L. Reiersen

Subscribed and sworn to before me this 23rd day of February 2007.

  
\_\_\_\_\_  
Notary Public

My commission expires 5/1/2010

**LORI WATSON**  
Notary ~~Public~~ - Notary Seal  
State of Missouri / County of Monroe  
Commission #: 06878226  
My Commission Expires 5/1/2010

1. Q Did Gerald and Joanne Relerson file a complaint with the PSC on September 30, 2004
2. regarding the billing, sewer not up to standards, improperly sized sewer pipes and the
3. need for some independent overseeing of the sewer system?
4. A Yes, Mr. Jaeger had no authority to bill for sewer service per PSC ruling 1-07-05 stating Blue
5. Lagoon Sewer Corp has no authority to operate a sewer company and therefore has no
6. authority to bill or demand payment for sewer services.
7. Q Have we been advised that the sewer system should be run by a private utility or Cannon
8. Water District?
9. A Yes, and we agree with the advice due to our lack of confidence in; Mr. Jaeger's judgment in
10. the installation of improperly sized sewer lines that have caused back ups of sewage in
11. homes (pictures attached); negligence in monitoring the condition of proper spray off
12. equipment; negligence in monitoring spray offs causing violations as reported by Mr. Nick
13. Hill, DNR Environmental Specialist, pictures attached; his lack of responsibility in following
14. court orders time after time (whether he is in the State of Missouri or another State), copy of
15. Second Judgment of Contempt Against Defendant Mr. Jaeger attached. This has been going
16. on since May 2005.
17. Q Did Mr. Jaeger add 31 homes illegally to the lagoon?
18. A Yes, letter from DNR dated August 24, 1990 stating that the treatment facility does
19. not have the capacity for expansion.
20. Q Did Mr. Jaeger operate a lagoon that exceeds it's operating level and did he
21. knowingly put in smaller sewer lines?
22. A Yes, report from Ms. Brenda Bethel, DNR, dated September 16, 2004 states lagoon
23. was built in 1990 as a no-discharge lagoon. Mr. Jaeger then added 31 homes which exceeded

24. the capacity of the lagoon. She talks about unsatisfactory issues - water level too high,  
25. discharges from the lagoon, minimum size of pipe misstated to the department, Mr. Jaeger  
26. falsified documentation stating he installed 8 inch sewer lines when in fact he installed 4 inch  
27. lines.  
28. Sewer did not comply with DNR standards per attached documentation.

29. Q Why did the AGO file a lawsuit against Mr. Jaeger on 1-18-05?

30. A Because Mr. Jaeger failed to comply with the law.

31. Q Did Mr. Jaeger discharge untreated sewage into a tributary of the Salt River?

32. A Yes, MSNBC report from "The Hannibal Courier-Post" about Attorney General Jay  
33. Nixon filing suit against Mr. Jaeger. His goal is to make sure the problem is  
34. corrected and the waters of the Salt River are protected from untreated sewage.

35. Q Why is it Mr. Jaeger thinks he can continually break the law?

36. A Because there have been no consequences to this actions. Letter from DNR dated 3-13-06,  
37. Irene Crawford, Regional Director states that Mr. Jaeger has done the same thing in other  
38. subdivisions in Ralls County (Berry Place Subdivision) and that the current sewer system  
39. does not meet standards.

40. Q Are the homeowners in favor of Cannon Water District?

41. A Yes. E-mail to Harry Bozoian, AGO, about a list of homeowners in favor of Cannon  
42. Water District taking control of the lagoon, dated 11-14-06, and concerns about  
43. Mr. Jaeger's Board Members for the 393.

44. Q Should Cannon Water District take over the sewer system?

45. A Yes. Missouri Statutes for Chapter 393 - Section 393.146 pertains to the acquisition of

- 46. small sewer corporation by a capable public utility for violation of regulatory
- 47. standards and failure to comply within a reasonable period of time. This is why
- 48. we want Cannon Water District to take over the system.

Mailed to PSC Oct 11/04

10/11/04

BEFORE THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI

Gerald & Joanne Reiersen  
18571 Alma Ct.  
Hartsburg, Mo 65039

(your name)

Complainant,

vs.

Case No. \_\_\_\_\_

Blue Lagoon Sewer Corp.

(utility company's name)

Respondent.

COMPLAINT

1. Complainant resides at 18571 Alma Ct. Hartsburg Mo 65039  
but house is located at 43615 Blue Lagoon Dr. Monroe City Mo 63456

2. Respondent, Ken Heeger / Blue Lagoon Sewer Corp.  
(Company's name and address)

17805 Bluff View Dr, Center Mo 63436, is a public utility providing  
service to complainant's residence.

3. As the basis of this complaint, complainant states the following facts: \_\_\_\_\_

- \* we purchased the house at the lake property with the understanding that water, sewer & electric was in place but we are now being billed for sewer without any prior knowledge of cost for this service. We also feel that charges don't reflect an actual cost of operating the lagoon
- \* we believe there is a real possibility that there will be a large cost to the homeowners to bring the sewer system up to standards in the future
- \* we've already had a sewer back up into our home (May 15/04) due to negligence in the installation of sewer lines, a rock in the line blocked the flow and lines not conforming to minimum requirements of 6"-8"
- \* we have learned that the lagoon does not comply with DNR regulations (not designed to actually discharge and no permit was issued to discharge)

\* most important points

4. The complainant has taken the following steps to present this complaint to the respondent: We sent a letter to Ken Jaeger regarding the costs of clean up involved due to the sewage back up (May 2004) but we have not received a response from him.

\* WHEREFORE, complainant now requests the following relief: We feel the system should be a private utility regulated by Public Service Commission, sewer district or homeowners association. We feel there needs to be some independent oversight of the operation.

9.30.04

Date

[Signature]

Signature of Complainant

Acid  
line

1266

Lct 14

Aug-04

Amount Due	
*10% Late Fee	
State Tax (5.725%)	
Total Amount	

**Please return this portion with your payment**

4/21/04	Water Usage 0
5/19/04	Water Usage 300
6/25/04	Water Usage 400

Am not paying for a water usage  
you also want incorporated until  
may

Tax 1	Amount
✓	<del>14.00</del>
✓	14.00
✓	14.00
	14.00

Is not paying state tax

**\$42.00**

544



schedule 1  
line 1


1-7-05

Respondents plan to do to address the DNR issues as well as how they plan to proceed to obtain a certificate of convenience and necessity from the Commission.

5. It is Staff's belief that it may be premature to proceed in the instant case until the depth and breadth of the Respondents' DNR issues can be ascertained. It seems fairly certain that this complaint case and the issues surrounding it will need the attention of both the Commission and the AGO to ultimately provide for compliance with Missouri Clean Water Law and safe, reliable sewer service to the complainants and other parties serviced by Respondent's sewer system. Therefore, the Staff recommends that any further action in the instant case be suspended until a joint plan between the AGO and Commission on how to proceed regarding the Respondents can be finalized.

### Jurisdiction over Billing and Payment Disputes

1. On December 2, 2004, a Staff Recommendation was submitted to the Commission. In its Recommendation, Staff concluded, among other things, that "[t]he Commission has jurisdiction over sewer facilities that serve the Hellebusches, but the Respondent does not possess a certificate of convenience and necessity and the facilities are not now regulated." On this basis, Staff contends that the Commission would have jurisdiction over billing and payment disputes, but without a certificate of convenience and necessity, ergo no approved rates or billing rules, there is no basis for Staff to make a judgment on any billing and payment issues at this time.

 2. Staff also contends that the Respondents have no authority to operate a sewer company and therefore has no authority to bill or demand payment for providing sewer services.

WHEREFORE, the Staff submits its *Response to Order Directing Filings* to the Commission.

Schedule  
line 1

# Proposal

**KENNETH D. JAEGER**

17805 Bluffview Drive • Center, MO 63436 • 573-735-3387

PROPOSAL SUBMITTED TO <i>Gen. [illegible]</i>		PHONE <i>(573) 657-9322</i>	DATE <i>7-20-77</i>
STREET <i>5500 E. 85th Road</i>		JCB NAME <i>D</i>	
CITY, STATE AND ZIP CODE <i>Harsham, Mo</i>		JCB LOCATION	
ARCHITECT <i>650307</i>	DATE OF PLANS		JOB PHONE

We hereby submit specifications and estimates for

I Ken Jaeger agree to sell lot #14  
for \$6,500 plus to be paid for this work  
before construction completed with lot  
for \$4,500 with MORTGAGE PAID  
OK 3/11 \$6,500 =

The Proposer hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

Payment to be made as follows: \_\_\_\_\_ dollars (\$ 6,500 ).

All material is guaranteed to be as specified. All work to be completed in a workman-like manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance.

Authorized  
Signature

Note: This proposal may be  
withdrawn by us if not accepted within \_\_\_\_\_ days.

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature: \_\_\_\_\_

Date of Acceptance: \_\_\_\_\_

Signature: \_\_\_\_\_



Schedule 1  
line 2

## Exterior Is Complete - You Finish Inside

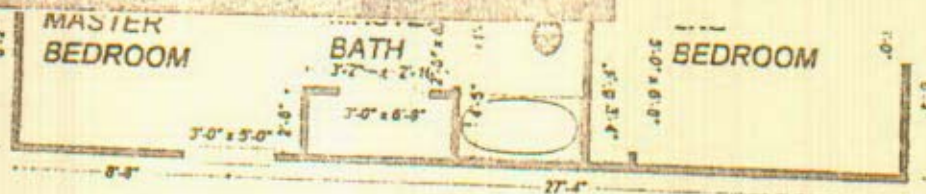
Three Bedroom - Two Bath

Garage - Lot - 200 Amp Elec - Water Line - Sewer - Vinyl Siding

Call Ken at 573-267-9870



CONCRETE  
DRIVE



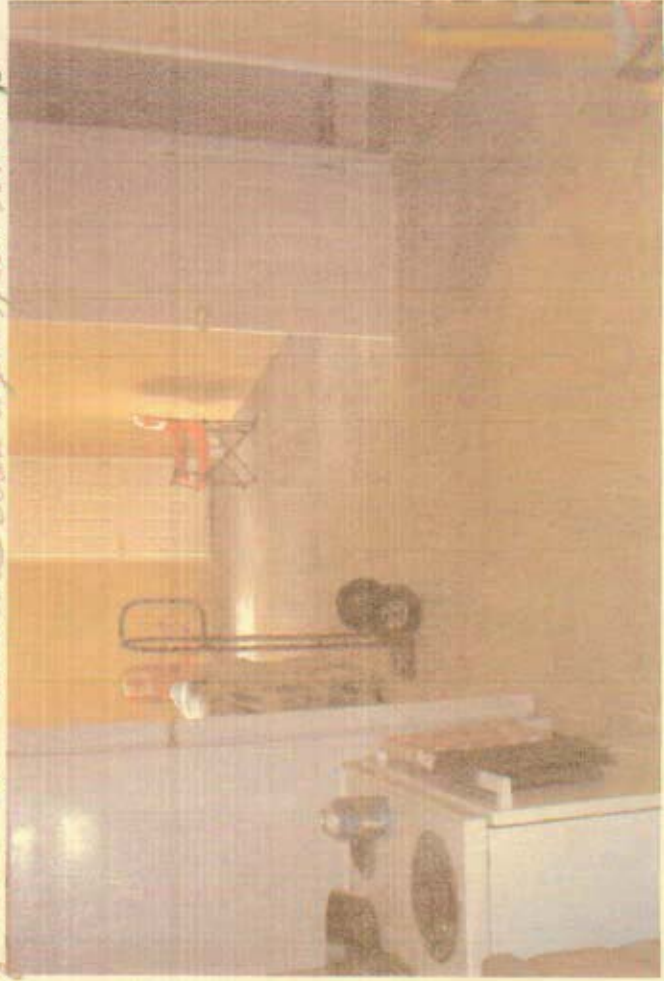
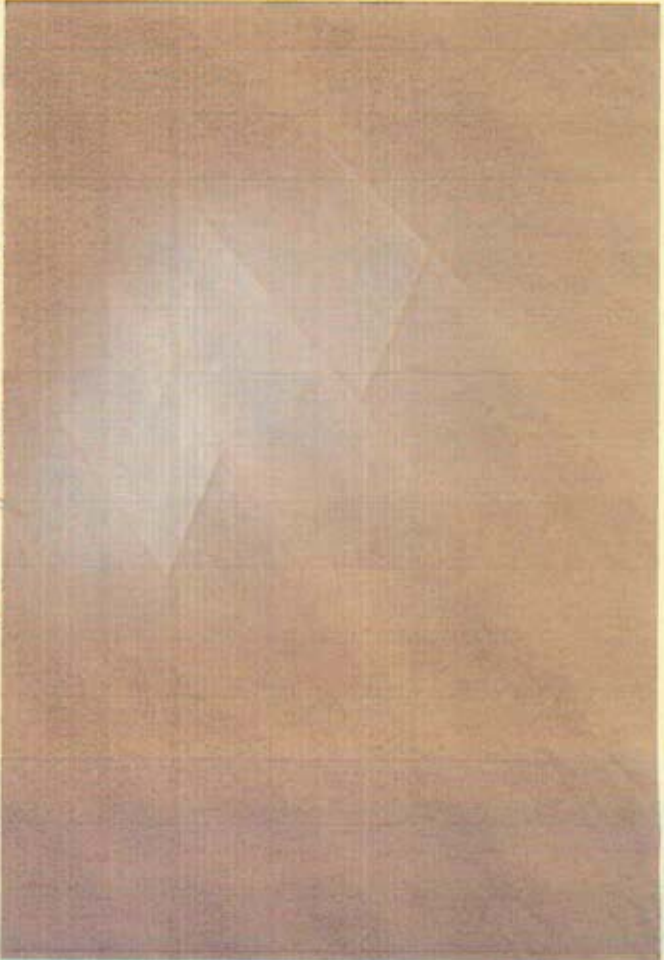
Schedule 7  
line 7

Supposed to be white

Red damaged to orange



all shown had to be replaced due to water damage from leaks

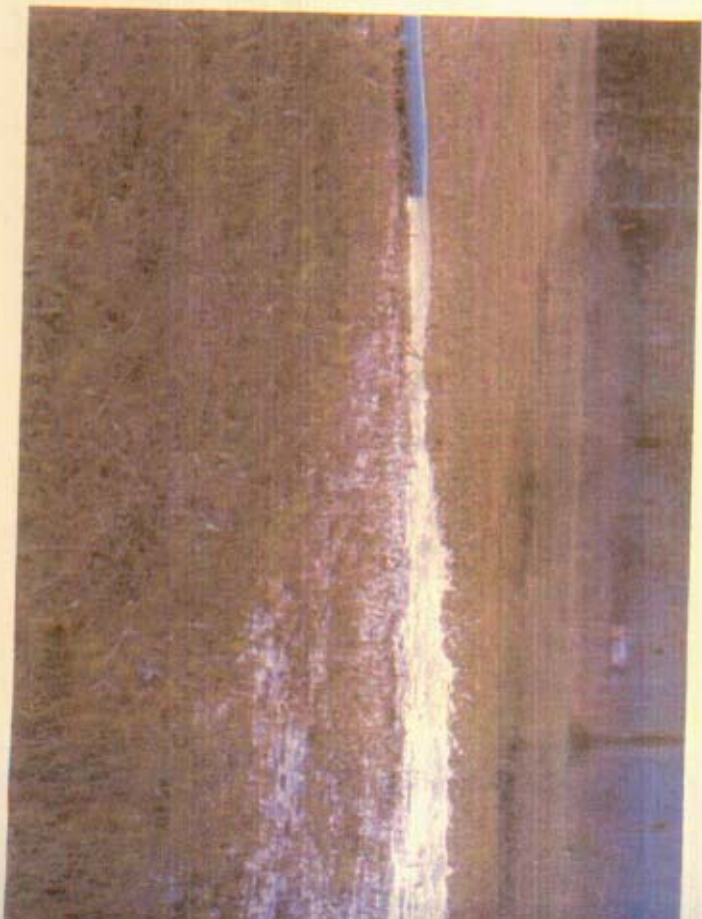
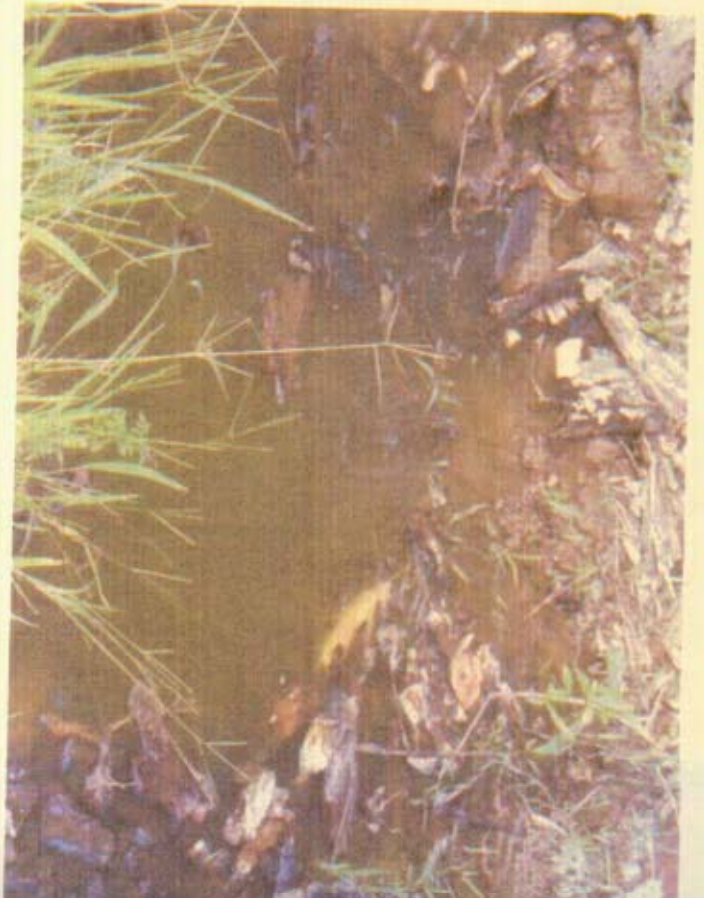




LIVE 7



sewage being pumped off into creek





MISSOURI DEPARTMENT OF NATURAL RESOURCES  
NOTICE OF VIOLATION

10-16-03

VIOLATION NUMBER

1673NE

DATE AND TIME ISSUED

October 14, 2003

SOURCE (NAME, ADDRESS, PERMIT NUMBER, LOCATION)

Ken Jaeger Lagoon

SW 1/4, SE 1/4, Section 14, Township 55 North, Range 7 West, Ralls County

MAILING ADDRESS

17805 Bluff View Drive

CITY

Center

STATE

MO

ZIP

63436

NAME OF OWNER OR MANAGER

Ken Jaeger

TITLE OF OWNER OR MANAGER

Lagoon Owner

LAW, REGULATION OR PERMIT VIOLATED

(1) Sections 644.051.2 and 644.076.1 RSMo. and 10 CSR 20-6.010 (1) (A) and (5) (A).

(2) Section 644.051.1 (2) RSMo. and 10 CSR 20-7.031 (3) (C).

NATURE OF VIOLATION

DATE(S):

TIME(S):

(1) Ken Jaeger operated, used or maintained a water contaminant source, a domestic wastewater lagoon, which discharged to a tributary to Salt River, waters of the state, without a Missouri State Operating Permit authorizing such a discharge.

(2) Ken Jaeger discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission.

SIGNATURE (PERSON RECEIVING NOTICE)

Sent Certified Mail

TITLE OR POSITION

SIGNATURE (PERSON ISSUING NOTICE)

TITLE OR POSITION

Environmental Specialist

**Report of Investigation  
Ken Jaeger Lagoon Discharge  
October 14, 2003  
Page 5**

1. The power to regulate the use of the facility.
2. The power to levy assessments on its members and enforce these assessments by liens on the properties of each owner.
3. The power to convey the facility to a higher continuing authority such as a sewer company, public sewer district or municipality.
4. The requirement that members connect with the facility and be bound by the rules of the association.

Additionally, the newly formed association must be a corporation in good standing, registered with the Missouri Secretary of State's Office.

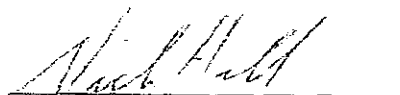
**REQUIRED ACTIONS:** By November 14, 2003, please provide the following to the Northeast Regional Office:

1. A written response to Notice of Violation #1673NE, containing the information requested in this report.
2. A written explanation of what is connected to your lagoon presently and what will be connected in the future. Also, provide information clarifying who owns the properties connected to the lagoon.
3. A written response indicating a timeline by which you can establish a homeowner's association (or other type of continuing authority) and submit the application for a Missouri State Operating Permit.

The lagoon system may also be regulated by the Public Service Commission. The commission should be contacted to determine if the system would be regulated as a sewer entity.

Since you are currently operating the facility without a permit, it is imperative that you continue to progress toward obtaining a permit in order to avoid enforcement action by the department. Please contact the department if any questions arise about what is required to bring the facility into compliance.

SUBMITTED BY:



Nick Hill  
Environmental Specialist I  
Northeast Regional Office

REVIEWED BY:



Mary Ann Redden  
Environmental Specialist IV  
Northeast Regional Office

Delivered  
June 7

STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

Bob Holden, Governor • Stephen M. Mahood, Director

CERTIFIED MAIL  
7003 1010 0004 1719 6310

www.dnr.state.mo.us

5.200 Ken Jaeger Lagoon  
(Formerly Known as Salt River Opry)  
Ralls County

October 14, 2003

Mr. Ken Jaeger  
17805 Bluff View Drive  
Center, MO 63436

**NOTICE OF VIOLATION**

Dear Mr. Jaeger:

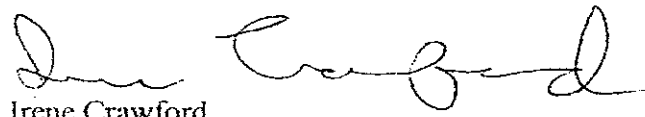
Enclosed is the Report of Investigation on an investigation that was conducted on September 12 and 15, 2003, by Mr. Nick Hill of the Missouri Department of Natural Resources' Northeast Regional Office. This investigation was conducted in response to environmental concerns received regarding the operation of your lagoon, which is located adjacent to the Salt River Resort in Ralls County, Missouri. Concerns reported to the Northeast Regional Office included pumping of the lagoon into a tributary to Salt River as well as an odorous flow in the tributary downstream of the lagoon.

Please find enclosed Notice of Violation #1673NE, which is being issued for an unauthorized discharge from your lagoon. A written response is to be submitted to the Northeast Regional Office by **November 14, 2003** containing the information requested in this report.

Should you have any questions regarding this matter, please contact Mr. Hill at (660) 385-2129 in the Northeast Regional Office, 1709 Prospect Drive, Macon, MO 63552.

Sincerely,

NORTHEAST REGIONAL OFFICE

  
G. Irene Crawford  
Regional Director

GIC/nhp

Enclosures: Report of Investigation, Notice of Violation #1673NE, Form B-Application for Operating Permit, Form I-Application for Wastewater Irrigation Systems

c: Water Pollution Control Program, Enforcement Section

*Integrity and excellence in all we do*

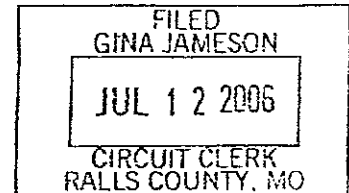
Sold 2004  
72



Schedule 7  
Page 7

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. )



Case No. CV805-12CC

**SECOND JUDGMENT OF CONTEMPT AGAINST DEFENDANT KEN JAEGER**

COMES NOW this day the parties hereto, the State of Missouri represented by the Missouri Attorney General's Office and the Defendant in person and represented by his attorney, James F. Lemon, whereupon plaintiffs' Motion for Contempt coming on regularly to be heard and being called, the parties are now ready to proceed, in the matter of the failure of Defendant Ken Jaeger to comply with this Court's Judgment and Order of May 3, 2005, and the Judgment of Contempt against Defendant Ken Jaeger of April 11, 2006, is taken up, evidence adduced, and the matter is submitted to Court, and the Court finds as follows:

1. The State filed a Petition for Civil Penalties and Injunctive Relief against Defendant Ken Jaeger ("Defendant") on January 19, 2005, alleging Defendant's failure to comply with the Missouri Clean Water Law and implementing regulations at Defendant's

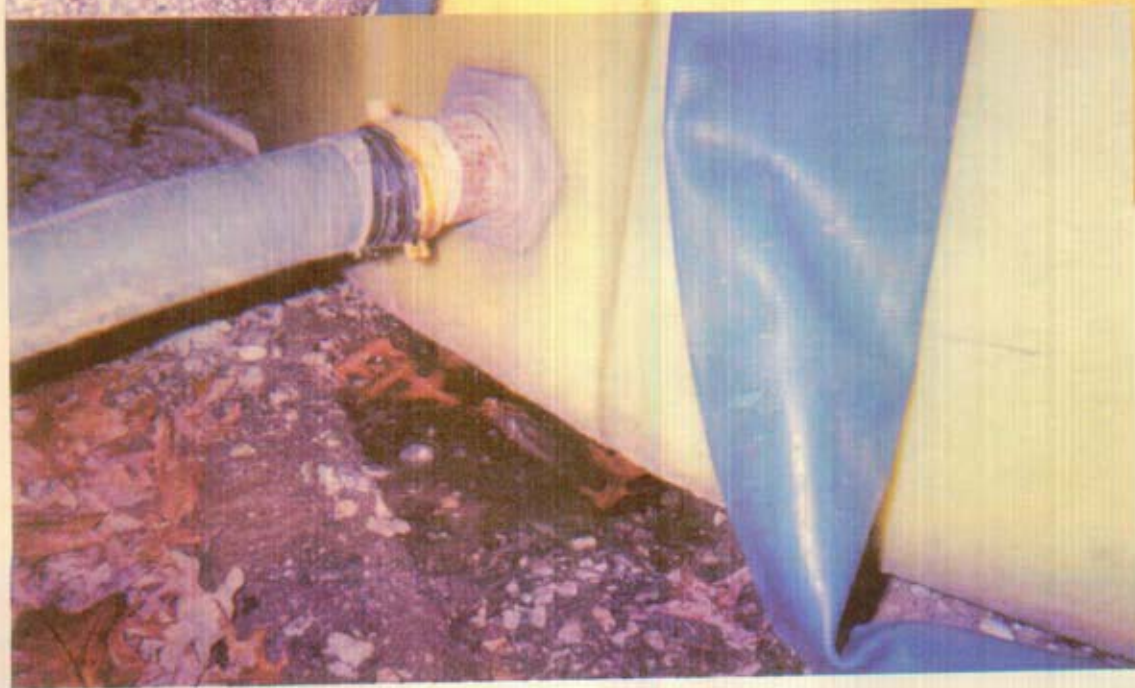
11. On July 5, 2006, this Court reviewed Defendant Ken Jaeger's compliance with the May 3, 2005, Judgment and Order against Defendant Ken Jaeger and the April 11, 2006, Judgment of Contempt against Defendant Ken Jaeger to determine compliance with such Judgments and Orders. This Court finds, and Defendant Ken Jaeger admits, that he has failed to comply with the May 3, 2005, Judgment and Order against Defendant Ken Jaeger and the April 11, 2006, Judgment of Contempt against Defendant Ken Jaeger.

NOW, THEREFORE, it is ordered and adjudged that Defendant Ken Jaeger is 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.

IT IS FURTHER ORDERED, that Defendant Ken 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:

1. Defendant Ken Jaeger is ordered to immediately comply with all aspects of the May 3, 2005, Judgment and Order and the April 11, 2006, Judgment of Contempt against Defendant Ken Jaeger. The May 3, 2005, Judgment and Order and the April 11, 2006, Judgment of Contempt shall remain in full force and effect, including, but not limited to, the schedule of fines contained in the Judgment of Contempt.

2. Defendant Ken Jaeger is also found in contempt of Court and is assessed a fine in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) for the



← sewage in Reinson's yard

Schedule 11  
June 11



Schedule 17  
line 17

Missouri Clean Water Commission  
Letter of Approval for Construction  
LA-2001992-C

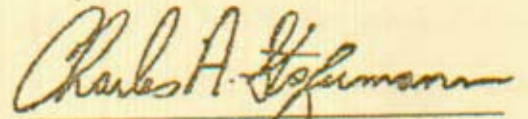
Continued.....

ADDITIONAL DESCRIPTION

Primary treatment is provided by a 1.0 acre (at 3 foot operating level) aerobic lagoon. This facility is to serve the Opry House, a restaurant, a 35 room motel, two employee residences, a convenience store and 97 spaces for recreational vehicles. The treatment facility does not have capacity for expansion beyond that listed above.

This approval does not authorize operation of these facilities.

August 24, 1990  
Effective Date

  
Charles A. Stiefemann, P.E.  
Director of Staff  
Missouri Clean Water Commission

Schedule 18  
line 18

JOHN ASHCROFT  
Governor

G. TRACY MEHAN III  
Director



STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL QUALITY  
P.O. Box 176  
Jefferson City, MO 65102

Division of Energy  
Division of Environmental Quality  
Division of Geology and Land Survey  
Division of Management Services  
Division of Parks, Recreation,  
and Historic Preservation

MISSOURI CLEAN WATER COMMISSION LETTER OF APPROVAL FOR CONSTRUCTION  
In compliance with the Missouri Clean Water Law, (Chapter 644 R.S. Mo.) and regulations

Approval No.: LA-2001992-C

Application No. 20-4604

Owner: Robert and Betty Vanderbeck

Owner's Address: Route 2, Box 22A, Monroe City, MO 63456

Facility Name: Salt River Opry

Facility Address: Rt. 2, Box 22A, Monroe City, MO 63456

Legal Description: S 1/2, Sec. 14, T55N, R7W, Ralls County, Missouri

River Reach No.: 07110007-03-2

is authorized to construct the no-discharge facility described in the above referenced application number in accordance with the limitations and requirements as set forth herein and in the attached conditions:

FACILITY DESCRIPTION

Facility Type: Aerobic lagoon, 163 days storage, irrigation

Waste Type: Domestic waste recreation complex

Wastewater Flow: 12,200 gpd summer, 4,900 gpd winter

Population Equivalent: 200

Application Area & Rate: 2.1 acres; Rate: 44 inches/acre/year

Application Equipment: Hand moved plastic hose



Schedule 20  
June 00

8/1/04

**REPORT ON ENVIRONMENTAL INVESTIGATION  
LOST VALLEY RESORT  
RALLS COUNTY  
September 16, 2004**

**INTRODUCTION**

Pursuant to authority of 644.026.1 RSMO of the Missouri Clean Water Law, a site investigation was conducted at Lost Valley Resort Wastewater Treatment System. The investigator was Ms. Brenda Bethel, P.E., of the Missouri Department of Natural Resources' Northeast Regional Office. The investigation was announced to Mr. Kevin Davies by telephone approximately an hour and half in advance.

Purpose of the investigation was to review conditions at the facility to response to environmental reports received concerning: 1. The lagoon level; 2. When land application will continue to be performed; 3. Possibility of a seep on the side of the berm; and 4. Why a pumper truck was emptying three loads of sewage into a manhole.

**FACILITY DESCRIPTION**

The lagoon, formerly owned by Mr. Robert Vanderbeck, was originally constructed under Letter of Approval #LOA 2001993-C, which was issued on August 24, 1990. The name of the facility at this time was the Salt River Opry. The type of facility was one holding pond with irrigation onto 2.1 acres of land application area. At one point, the property with the lagoon was foreclosed upon and was auctioned off at a public auction. Mr. Jaeger purchased the property at the auction.

Currently connected to the lagoon are: Lost Valley Resort's phase I area with 11 lots; Lost Valley Resort's phase II area with 22 lots; the Salt River Inn with 21 rooms; a convenience store and restaurant, a RV Park with 72 sites, 5 apartments/cabins, 2 washing machines, and the Salt River Theater.

**UNSATISFACTORY FEATURES**

1. The water level in the lagoon exceeds the maximum operating level and is in the two feet freeboard of the lagoon.

**Required Action:** Discharges from the lagoon are not allowed. The wastewater from the lagoon needs to be land applied onto the land application field, when weather and conditions allow land application.

2. 10 CSR 20-8.020(9)(B) states that the minimum allowable size of pipe for schools, resorts and similar establishments is six inches. No more than three mobile homes or campsites or a four unit apartment house may be connected to a 4-inch line.

**Required Action:** Submit accurate "As Built" drawings by October 1, 2004.



Manhole one was observed next. The manhole was located between lot 24 and lot 25 on the south side of the main road in the residential housing development. Ms. Bethel commented that the pipes in the manhole were small. Lost Valley Resort representatives commented that two 4-inch lines are feeding into one 6-inch line. Ms. Bethel commented that these lines were indicated to be 8-inch lines on the submittal to the department.

Finally, both the lift stations were observed. The main lift station appeared to be working. The water level was too low to start the pumps for an operation test. The pumps were off during the observation of the wet well. Lost Valley Resort representatives commented that both pumps were working. A metal cover was noted to be the lid for the wet well. There was no evidence of releases or bypasses. No odors were noted. The water in the creek just down stream of the wet well appeared clear.

The lift station serving the Salt River Inn was observed next. The wet well was pumped down. Both pumps were stated to be working. Ms. Bethel questioned what the reports were of a pumper truck in the area. Lost Valley Resort representatives indicated that the coupling on each of the pump's force mains in the wet well became loose, preventing wastewater from being pumped to the manhole next to the lagoon. The water level in the wet well was too high for personnel to fasten the couplings back on, so a pumper truck was brought in to lower the water in the wet well. Lost Valley Resort representatives indicated that the high water alarms did go off. Mr. Mark O'Brian in New London was contacted. He pumped out the wet well serving the Salt River Inn and then dumped each load into manhole one. It was stated that in total, three loads were pumped from the wet well and into manhole one.

Photographs are enclosed.

#### WATER QUALITY MONITORING

No water quality monitoring was performed in the tributary to Salt River. The appearance of the creek water was clear with no odors.

SUBMITTED BY:



Brenda Bethel, P.E.  
Environmental Engineer III  
Northeast Regional Office



Schedule 50  
line 20

COPY

101-572



MISSOURI DEPARTMENT OF NATURAL RESOURCES  
WATER POLLUTION CONTROL PROGRAM  
P.O. BOX 176 JEFFERSON CITY MO 65102-0176  
(SEE ATTACHED MAP FOR APPROPRIATE REGIONAL OFFICE)  
**APPLICATION FOR CONSTRUCTION PERMIT -  
SEWER EXTENSION**

**FOR DEPARTMENT USE ONLY**

PERMIT NO.

MO -

FEE RECEIVED

DATE RECEIVED

DO NOT ATTEMPT TO COMPLETE THIS FORM BEFORE READING THE ACCOMPANYING INSTRUCTIONS.  
**NOTE: A CONSTRUCTION PERMIT FEE MUST ACCOMPANY THIS APPLICATION.**

1.1 NAME OF PROJECT Lost Valley Subdivision			
1.2 LOCATION OF PROJECT Route J			COUNTY Ralls
2.1 OWNER'S NAME Kenneth Jaeger			
ADDRESS 17805 Bluffview Drive	CITY Center	STATE Missouri	ZIP CODE 63436
2.2 CONTINUING AUTHORITY NAME			
ADDRESS	CITY	STATE	ZIP CODE

3.1 BRIEF DESCRIPTION  
Construction of approximately 2,274 +/- LF of 8" gravity sewer main, 2 manholes, duplex lift station, and approximately 900 +/- LF of 4" forcemain.

3.2 DESIGN INFORMATION

A. POPULATION OR NUMBER OF LOTS TO BE SERVED BY THIS EXTENSION: 37 Lots

B. ESTIMATED FLOW TO BE CONTRIBUTED BY THIS EXTENSION: 8,325 gpd

C. INDUSTRIAL WASTES: TYPE N/A FLOW

D. RECEIVING SEWER: SIZE N/A CAPACITY

3.3 RECEIVING TREATMENT FACILITY NAME OR TYPE OF TREATMENT PLANT  
Ken Jaeger Lagoon

LOCATION OF TREATMENT FACILITY  
Northwest Corner of Development (See Attached)

4.1 HAS THE CONTINUING AUTHORITY THAT OPERATES THE TREATMENT FACILITY AND OR COLLECTION SYSTEM APPROVED OR AGREED TO ACCEPT THE ADDITIONAL SEWAGE FLOW?  
☐ YES ☐ NO

4.2 I CERTIFY THAT I AM FAMILIAR WITH THE INFORMATION CONTAINED IN THE APPLICATION, AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF SUCH INFORMATION IS TRUE, COMPLETE, AND ACCURATE, AND IF GRANTED THIS PERMIT, I AGREE TO ABIDE BY THE MISSOURI CLEAN WATER LAW AND ALL RULES, REGULATIONS, ORDERS AND DECISIONS, SUBJECT TO ANY LEGITIMATE APPEAL AVAILABLE TO APPLICANT UNDER THE MISSOURI CLEAN WATER LAW, OF THE MISSOURI CLEAN WATER COMMISSION.

APPLICANT'S SIGNATURE (SEE INSTRUCTIONS)	DATE 2-3-04
NAME PRINTED	TITLE OR CORPORATE POSITION



sewerage over-flow  
Schedule 24  
June 24





Schedule 29  
line 29



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY  
65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

P.O. Box 899  
(573) 751-3321

February 23, 2006

Lost Valley Residents  
c/o 43615 Blue Lagoon Drive  
Monroe City, MO 63456

Re: Lost Valley Subdivision/Ken Jaeger/Blue Lagoon Sewer System  
*State of Missouri v. Ken Jaeger*, Case No. CV805-12CC

Dear Residents:

I am in receipt of your letter dated February 5, 2006. I am Senior Chief Counsel in the Agriculture and Environment Division for Missouri Attorney Jay Nixon, and I am Harry Bozoian's direct supervisor.

On November 24, 2004, the Missouri Department of Natural Resources ("the Department") referred this matter to our office after they were unable to bring the wastewater treatment lagoon and collection system at the Lost Valley Subdivision into compliance with the Missouri Clean Water Law. On January 18, 2005, after reviewing the facts in this matter, the Attorney General authorized Mr. Bozoian to file a lawsuit against Ken Jaeger to compel compliance with the law. Mr. Bozoian did so and thereafter obtained a Judgment of Preliminary Injunction against Mr. Jaeger on May 3, 2005. Since that time, Mr. Bozoian has preformed legal discovery in this matter and will continue to prosecute Mr. Jaeger to compel him to bring the Lost Valley Subdivision wastewater treatment system and collection system into compliance with the law.

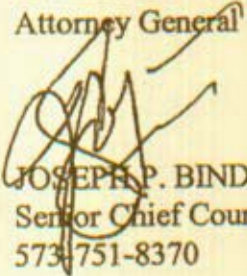
As you are probably aware, the Judgment of Preliminary Injunction required Mr. Jaeger among other things, to submit a Preliminary Engineering Report to the Department for the collection system and the wastewater treatment system. Mr. Jaeger did so in early August of 2005 and the Department made comments responsive to this report in October of 2005. Since submission of the report, technical, engineering disagreements arose in regard to the Preliminary Engineering Report between the Department's Northeast Regional Office ("NERO") engineering staff and MECO Engineering (Mr. Jaeger's retained engineer). Please be advised that a Department approved Engineering Report is the indispensable first step so that the collection system and wastewater treatment system serving Lost Valley Subdivision can be brought into compliance with the law. Without it, the process of designing and constructing improvements so

*Lost Valley Residents*  
February 23, 2006  
Page 4

I hope this letter answers your questions and concerns. Rest assured, upon completion of the engineering, this office will be filing the appropriate motions against Mr. Jaeger to compel compliance, as necessary.

Sincerely yours,

JEREMIAH W. (JAY) NIXON  
Attorney General



JOSEPH P. BINDBEUTEL  
Senior Chief Counsel  
573-751-8370

JPB:lh

c: Representative Rachel Bringer  
Kevin Mohammadi, MDNR-WPP  
Irene Crawford, MDNR-NERO



*Folder*

*Schedule 31  
line 31*

*3/1/05*

**MSNBC.com**

## Attorney general sues Ralls Co. developer

### Accused of discharging untreated sewage into Salt River tributary

**By DANNY HENLEY**

The Hannibal Courier-Post

NEW LONDON - Attorney General Jay Nixon filed a lawsuit Wednesday in Ralls County Circuit Court against a local developer for allegedly allowing untreated sewage to discharge into a tributary that runs into the Salt River. NEW LONDON - Attorney General Jay Nixon filed a lawsuit Wednesday in Ralls County Circuit Court against a local developer for allegedly allowing untreated sewage to discharge into a tributary that runs into the Salt River.

The lawsuit accuses Ken Jaeger of Center, developer of Lost Valley Subdivision, of constructing and operating an unpermitted sewage lagoon, which has been discharging untreated sewage into a tributary of the Salt River. Lost Valley Subdivision is located near Mark Twain Lake, about two miles north of Clarence Cannon Dam on the east side of Highway J.

"Safeguarding the health and safety of Missouri residents is a high priority for this office, and obviously Mr. Jaeger has had adequate time to comply with Missouri law," Nixon said in a press release from the attorney general's office. "Filing court action is a last resort, but in this instance, we felt it was the proper action to take."

The Missouri Department of Natural Resources (DNR) cited Jaeger in October 2003 for operating a wastewater lagoon without the proper permit and for discharging water contaminants into waters of the state. In December 2003, the DNR again issued a violation to Jaeger for installing a sewer system without first receiving a construction permit and for conducting land disturbance activities without a proper permit. On Jan. 13, 2005, DNR inspectors observed sewage overflowing the berm of the lagoon and flowing into the Salt River tributary.

Nixon is asking that the court find that Jaeger has violated the Missouri Clean Water Law and that civil penalties of up to \$10,000 per violation per day be assessed.

Fines could extend back to when the violation was first observed in 2003, according to Jim Gardner, press secretary with the attorney general's office.

"We always ask for the maximum fine, but it will be up to the judge to determine what's appropriate," he said. "The severity of the fine will depend on a number of things, such as what type of damage has been done to the environment and the severity of the violation."



There is no cap to what the total amount of the penalty could be.

"Obviously if it went back to 2003, it could total up to a fairly substantial amount. The judge will determine what an appropriate fine is," said Gardner.

Any civil penalty assessed by the judge would go to the Ralls County school fund, according to Gardner.

The lawsuit also asks that Jaeger be required to obtain a Missouri State Operating Permit to properly operate and maintain the lagoon to prevent further illegal discharges.

"Our goal is to make sure the problem is corrected and the waters of the Salt River are protected from untreated sewage," said Gardner. "The DNR has been working with Mr. Jaeger since the first violation notice was issued in 2003. To date he has failed to receive approval for the sewage method being used at that site.

"When the problem was observed again on Jan. 13, that was kind of like the last straw and prompted the civil action in court."

Because of the nature of the violation, the attorney general would like to see the case progress quickly.

"We hope that it will move in a timely manner in order that we can get the situation resolved," said Gardner. "It's in the hands of the Ralls County Circuit Court. It will be up to the judge as to when a hearing date will be set."

URL: <http://www.msnbc.msn.com/id/6856400/print/1/displaymode/1098/>



Schedule 35  
June 35

STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

Matt Blunt, Governor • Doyle Childers, Director

5.100 Lost Valley Resort  
Ralls County

www.dnr.mo.gov

March 13, 2006

Ms. Joanne Reiersen  
c/o 43615 Blue Lagoon Drive  
Monroe City, MO 63456

Dear Ms. Reiersen:

The Northeast Regional Office is providing the following information to you in response to your letter dated February 17, 2006, and the letter from Mr. Joseph Bindbeutel of the Office of the Attorney General of Missouri dated February 23, 2006, concerning the Lost Valley Subdivision. Mr. Bindbeutel suggested in his letter that this office might be better suited to discuss the outstanding regulatory issues.

The Northeast Regional Office began investigating environmental issues at the Lost Valley Resort in 2003. After being unsuccessful in resolving the compliance issues, the Northeast Regional Office referred the case to the department's Water Pollution Enforcement Section on October 5, 2004. The department referred the case to the Office of the Attorney General on November 24, 2004. The Office of the Attorney General had handled another case involving Mr. Jaeger and a development called Berry Place Subdivision in Ralls County that was settled in 1997, involving wastewater compliance issues. ↖

The primary compliance issues at Lost Valley were:

- Construction and operation of a wastewater facility without required permits.
- Improper land application resulting in a discharge into waters of the state.
- Construction of a wastewater collection system that did not meet the regulatory requirements.
- Construction of a wastewater treatment system that did not meet the regulatory requirements.

The reluctance of Mr. Jaeger to voluntarily comply with the regulatory requirements, the broad range of these violations, and the fact that the wastewater lines and facility were already constructed and in operation prior to our involvement make this a difficult case to resolve successfully in a short period of time. Several Northeast Regional Office staff assisted with the legal proceeding that resulted in a Judgement and Order of Preliminary Injunction against Mr. Jaeger in May of 2005.

In August of 2005, Mr. Jaeger's engineering firm (MECO Engineering) submitted a construction permit application to replace the existing 4-inch sewer lines with 8-inch sewer lines. MECO Engineering also submitted a Preliminary Engineering Report (PER) for the existing wastewater

treatment system consisting of a no-discharge lagoon with land application. The Northeast Regional Office reviewed these submittals and mailed comment letters to MECO Engineering on October 3 and 7, 2005. These comment letters requested clarification on the sewer collection system, and additional information on the lagoon capacity and waste irrigation system to ensure they were adequate for the amount of sewage. The letters required a response by October 25, 2005.

On October 26, 2005, MECO Engineering responded to the department stating they had been unable to contact Mr. Jaeger to authorize them to proceed. Despite Mr. Jaeger's failure to authorize MECO Engineering to proceed with a response, on January 27, 2006 representatives from the Department of Natural Resources' traveled to Hannibal to meet with MECO Engineering.

During this meeting MECO Engineering representatives and department staff discussed the comments on the construction permit application and the PER raised by the department. Representatives from MECO Engineering also indicated the reason for not providing a response was that Mr. Jaeger had not provided payment to them to continue with the Lost Valley Resort project. To complicate matters the original engineer working on the Lost Valley project for MECO Engineering moved out of state and the project was reassigned. Despite Mr. Jaeger's failure to pay, MECO Engineering agreed to respond to the department's comment letters to move the project forward.

Based upon the information provided at the meeting, the Department of Natural Resources' Northeast Regional Office was able to issue a construction permit for a sewer extension for the gravity collection lines for the subdivision on February 9, 2006. The construction permit requires the work to be completed within 60 days and certified by an engineer.

On February 2, 2006, MECO Engineering submitted a revised PER that addressed most of the issues. However, the following items will still need to be resolved in a final engineering report and either a construction permit application or an application for a Missouri State Operating Permit.

- In accordance with 10 CSR 20-8.020(15)(F)2., the required storage period for this site is 90 days. The PER indicates that the current lagoon system does meet minimum design criteria for days of storage. In order to obtain an operating permit, the permittee shall demonstrate that the lagoon has the required storage.
- A proper irrigation system is required to meet the design and application rates listed at 10 CSR 20-8.020(15)(F)3 through 7. The irrigation system currently in place does not meet these requirements. In order to obtain an operating permit, a properly designed land application system shall be installed. ←
- 10 CSR 20-8.020(13)(A)4 identifies the lagoon seal and seepage requirements. Specific information of the procedure to be used to determine if the lagoon is seeping, including seepage rates, pollutants to be monitored in the test holes, and how that data will be compared to the wastewater in the lagoon is required. ←

LIVE 35

- The department has identified operating problems with the lift station serving the hotel and theater. This lift station was observed discharging wastewater outside of the collection system. In order to obtain an operating permit for the collection system, this lift station shall be repaired and operational control shall be established.
- 10 CSR 20-6.010(3) identifies Continuing Authorities, which can be issued permits to collect and/or treat wastewater. The PER did not identify a continuing authority that will accept the collection and treatment system as required by the above regulation. In order to obtain an operating permit, proof of a proper continuing authority shall be submitted as required by 10 CSR 20-6.010(3)(A).

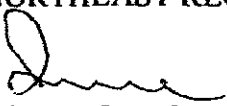
If a construction permit will not be required to bring the treatment system into compliance, then within 30 days following completion of the construction of the collection system Mr. Jaeger is required to submit a final engineering report sealed by a professional engineer and a complete application for the operating permit. The engineering report will need to resolve all of the issues listed above.

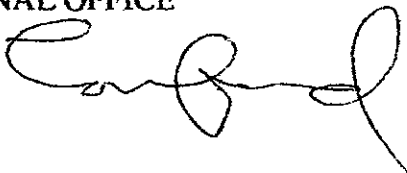
*New Date*  
→ If construction will be required to bring the treatment and collection system into compliance with all department requirements, Mr. Jaeger is required to submit a final engineering report sealed by a professional engineer and a complete construction permit application is due in this office on or before April 23, 2006.

Please share this information with other residents of the subdivision, as it is our understanding that you are the spokesperson for this group. If you have any questions or need additional information, please contact me at (660) 385-8000 in the Northeast Regional Office, 1709 Prospect Drive, Macon, MO 63552.

Sincerely,

NORTHEAST REGIONAL OFFICE

  
G. Irene Crawford  
Regional Director



GIC/ks

- c: Mr. Mathew Munzlinger, E.I.T.  
Mr. Harry D. Bozoian, Assistant Attorney General  
Mr. Paul Dickerson, Water Protection Program, Compliance and Enforcement Section  
Mr. Randy Kixmiller, P.E., Water Protection Program, NPDES Permits and Engineering Section  
Ms. Brenda Bethel, Northeast Regional Office  
Mr. Jamie Shinn, Northeast Regional Office  
Representative Rachel L. Bringer



*Undecided 140  
line 16*

**Robert Hellebusch**

---

**From:** "Robert Hellebusch" <rmhldh@msn.com>  
**To:** <harry.bozoian@ago.mo.gov>  
**Sent:** Tuesday, November 14, 2006 2:52 AM  
**Subject:** Fw: List of names and Concerns

Harry ,here is the list you requested of home-owners[12] in favor of Cannon Water District taking control of the lagoon , over having a 393 set up. There is possibly more in favor of the water district , but this is all we could contact at this time. Which is more than 50% of the home-owners. Their concerns are also listed [the roads]. Per our phone conversation you now can call Joe Maxwell and tell him to stop the proceeding on the 393 and have Ken Jaeger start working on getting an approved land application system. There is also concern about the board members Ken Jaeger has lined up for the 393 and the cost of having someone land apply the waste from the lagoon. An amount of \$5,000 per application is the rumor. I spoke to DNR at the court house after you left an they said it would have to be done 5or6 times a year. \$5,000 times 6 = \$30,000. BOB HELLEBUSCH

— Original Message —

**From:** Roy Howard  
**To:** Robert Hellebusch ; gidgetdmk d kelly ; Wkelley721 ; Joanne Evans  
**Sent:** Monday, November 13, 2006 5:23 PM  
**Subject:** List of names and Concerns

**HI BOB, HERE IS THE LIST OF PEOPLE ROY HAS PERSONALLY TALKED TO.**

**JIM AND SALLY EMBERTON IN FAVOR OF CANNON WATER DISTRICT.  
CONCERNS ROADS.**

**MIKE MOSES UNDECIDED**

**SUE MOSES IN FAVOR OF CANNON WATER DISTRICT. CONCERNS COST OF  
OPERATION OF LAGOON.**

**MIKE AND VICKY WILKERSON IN FAVOR OF CANNON WATER DISTRICT.  
CONCERNS ROADS AND WOULD LIKE TO SEE ASPHALT CHIPS.**

**JEFF AND CINDY AMPTMANN IN FAVOR OF CANNON WATER DISTRICT.  
CONCERNS ROADS**

**MIKE AND TRISH SHARKEY IN FAVOR OF CANNON WATER DISTRICT.  
CONCERNS ROADS**

**JERRY AND JOANNE REIERSON IN FAVOR OF CANNON WATER DISTRICT.**

**BOB AND LINDA HELLEBUSCH IN FAVOR OF CANNON WATER DISTRICT.**

**CONCERNS OPENING BLOCKED ON ONE END OF CULVERT AT END OF DRIVEWAY**

**MITCH TURNER IN FAVOR OF CANNON WATER DISTRICT. CONCERNS ROADS**

**BILL AND DONNA KELLY IN FAVOR OF CANNON WATER DISTRICT.**

**JIM AND DONNA HUNTER IN FAVOR OF CANNON WATER DISTRICT. CONCERNS  
ROADS**

**MIKE LAROSE IN FAVOR OF CANNON WATER DISTRICT.**

**DEBBIE AND ROY HOWARD IN FAVOR OF CANNON WATER DISTRICT.**

**CONCERNS ROADS, KEN HAVING CONTROL OVER THE LAGOON AND TRYING TO  
RECOUP COST FOR THE UPGRADES**

**ROY HAS NOT SPOKEN TO RAY AND RITA WILDHABER BUT WITH INFORMATION**

11/14/2006

FROM JERRY REIERSON RAY AND RITA WILDHABER ARE IN FAVOR OF CANNON  
WATER DISTRICT

THIS IS THE LIST

DEBBIE AND ROY

# Missouri Revised Statutes

## Chapter 393 Gas, Electric, Water, Heating and Sewer Companies Section 393.146

August 28, 2006

**Acquisition of small water or sewer corporation by capable public utility, when definitions--alternatives to be discussed, factors to consider--price for acquisition, how determined--plan for improvements required--rate case procedure to be used--rulemaking authority.**

393.146. 1. As used in this section the following terms shall mean:

(1) "Capable public utility", a public utility that regularly provides the same type of service as a small water corporation or a small sewer corporation to more than eight thousand customer connections, that is not an affiliate of a small water corporation or a small sewer corporation, and that provides safe and adequate service; and shall not include a sewer district established pursuant to article VI\*, section 30(a) of the Missouri Constitution, sewer districts established under the provisions of chapter 204, 249 or 250, RSMo, public water supply districts established under the provisions of chapter 247, RSMo, or municipalities that own and operate water or sewer systems;

(2) "Department", the department of natural resources;

(3) "Small sewer corporation", a public utility that regularly provides sewer service to eight thousand or fewer customer connections;

(4) "Small water corporation", a public utility that regularly provides water service to eight thousand or fewer customer connections.

2. The commission may order a capable public utility to acquire a small water or sewer corporation if, after providing notice and an opportunity to be heard, the commission determines:

(1) That the small water or sewer corporation is in violation of statutory or regulatory standards that affect the safety and adequacy of the service provided by the small water or sewer corporation, including but not limited to the public service commission law, the federal clean water law, the federal Safe Drinking Water Act, as amended, and the regulations adopted under these laws; or

(2) That the small water or sewer corporation has failed to comply, within a reasonable period of time, with any order of the department or the commission concerning the safety and adequacy of service, including but not limited to the availability of water, the potability of water, the palatability of water, the provision of water at adequate volume and pressure, the prevention of discharge of untreated or inadequately treated sewage to the waters of the state, and the prevention of environmental damage; or

(3) That it is not reasonable to expect that the small water or sewer corporation will furnish and maintain

safe and adequate service and facilities in the future; and

(4) That the commission has considered alternatives to acquisition in accordance with subsection 3 of this section and has determined that they are impractical or not economically feasible; and

(5) That the acquiring capable public utility is financially, managerially, and technically capable of acquiring and operating the small water or sewer corporation in compliance with applicable statutory and regulatory standards.

3. Except when there is an imminent threat of serious harm to life or property, before the commission may order the acquisition of a small water or sewer corporation in accordance with subsection 2 of this section, the commission shall discuss alternatives to acquisition with the small water or sewer corporation and shall give such small water or sewer corporation thirty days to investigate alternatives to acquisition, including:

(1) The reorganization of the small water or sewer corporation under new management;

(2) The entering of a contract with another public utility or a management or service company to operate the small water or sewer corporation;

(3) The merger of the small water or sewer corporation with one or more other public utilities; and

(4) The acquisition of the small water or sewer corporation by a municipality, a municipal authority, a public water supply district, a public sewer district, or a cooperative.

4. When the commission determines that there is an imminent threat of serious harm to life or property, the commission may appoint an interim receiver prior to the opportunity for hearing, provided that the commission shall provide opportunity for hearing as soon as practicable after the issuance of such order.

5. In making a determination under subsection 2 of this section, the commission shall consider:

(1) The financial, managerial, and technical ability of the small water or sewer corporation;

(2) The financial, managerial, and technical ability of all proximate public utilities that provide the same type of service and constitute an alternative to acquisition;

(3) The expenditures that are needed to improve the facilities of the small water or sewer corporation to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety, and reasonableness of utility service, and to sufficiently provide safe and adequate service to the customers of the small water or sewer corporation;

(4) The potential for expansion of the certificated service area of the small water or sewer corporation; and

(5) The opinion and advice, if any, of the department as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the safety and adequacy of utility service.

6. Subsequent to the determination required under subsection 2 of this section, the commission shall issue an order for the acquisition of a small water or sewer corporation by a capable public utility. Such

*line 44*

order shall include granting a certificate of public convenience and necessity to the acquiring capable public utility for the small water or sewer corporation's established service area.

7. The price for the acquisition of a small water or sewer corporation shall be determined by agreement between the small water or sewer corporation and the acquiring capable public utility, subject to a determination by the commission that the price is reasonable. If the small water or sewer corporation and the acquiring capable public utility are unable to agree on the acquisition price, or the commission disapproves the acquisition price to which the utilities agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the small water or sewer corporation at an acquisition price that is equal to the ratemaking rate base as determined by the commission after notice and hearing, or providing that the acquiring capable public utility will not be allowed to earn a rate of return on the portion of the purchase price that is in excess of the ratemaking rate base determined by the commission after notice and hearing. The burden of establishing the ratemaking rate base shall be upon the small water or sewer corporation.

8. Any capable public utility that is ordered by the commission to acquire a small water or sewer corporation shall, within thirty days after acquisition, submit a plan, including a timetable, for bringing the small water or sewer corporation into compliance with applicable statutory and regulatory standards to the commission for approval. The capable public utility shall also provide a copy of the plan to the department and such other state or local agency as the commission may direct. The commission shall give the department adequate opportunity to comment on the plan and shall consider any comments submitted by the department and shall expeditiously decide whether to approve the plan.

9. Upon the acquisition of a small water or sewer corporation by a capable public utility, and approval by the commission of a plan for improvements submitted under subsection 8 of this section, the acquiring capable public utility shall not be liable for any damages if the cause of those damages is proximately related to violations of applicable statutes or regulations by the small water or sewer corporation and the acquiring capable public utility remains in compliance with the plan for improvements submitted under subsection 8 of this section. This subsection shall not apply:

- (1) Beyond the end of the timetable in the plan for improvements;
- (2) Whenever the acquiring capable public utility is not in compliance with the plan for improvements; or
- (3) If, within sixty days after receipt of notice of the proposed plan for improvements, the department submitted written objections to the commission and those objections have not subsequently been withdrawn.

10. Upon approval by the commission of a plan for improvements submitted under subsection 8 of this section, and the acquisition of a small water or sewer corporation by a capable public utility, the acquiring capable utility shall not be subject to any enforcement actions by state or local agencies that had notice of the plan, if the basis of such enforcement action is proximately related to violations of applicable statutes or regulations by the small water or sewer corporation. This subsection shall not apply:

- (1) Beyond the end of the timetable in the plan for improvements;
- (2) Whenever the acquiring capable public utility is not in compliance with the plan for improvements;

(3) If, within sixty days of having received notice of the proposed plan for improvements, the department submitted written objections to the commission and those objections have not subsequently been withdrawn; or

(4) To emergency interim actions of the commission or the department, including but not limited to the ordering of boil-water advisories or other water supply warnings, of emergency treatment, or of temporary alternate supplies of water or sewer services.

11. If the commission orders the acquisition of a small water or sewer corporation, the commission shall authorize the acquiring capable public utility to utilize the commission's small company rate case procedure for establishing the rates to be applicable to the system being acquired. Such rates may be designed to recover the costs of operating the acquired system and to recover one hundred percent of the revenues necessary to provide a net after-tax return on the ratemaking rate base value of the small water or sewer corporation's facilities acquired by the capable public utility, and the ratemaking rate base value of any improvements made to the facilities by the acquiring capable public utility subsequent to the acquisition, at a rate of return equivalent to one hundred basis points above the rate of return authorized for the acquiring capable public utility in its last general rate proceeding. The acquiring capable public utility may utilize the commission's small company rate case procedure for the purposes stated in this section until such time that a determination is made on the acquiring utility's next company-wide general rate increase, but not in excess of three years from the date of the acquisition of the subject small water or sewer corporation.

12. Proceedings under this section may be initiated by complaint filed by the staff of the commission, the office of the public counsel, the mayor, or the president or chair of the board of aldermen, or a majority of the council, commission, or other legislative body of any city, town, village, or county within which the alleged unsafe or inadequate service is provided, or by not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of the utility service provided by a small water or sewer corporation. The complainant shall have the burden of proving that the acquisition of the small water or sewer corporation would be in the public interest and in compliance with the provisions of this section.

13. The notice required by subsection 2 of this section, or any other provision of this section, shall be served upon the small water or sewer corporation affected, the office of the public counsel, the department, all proximate public utilities providing the same type of service as the small water or sewer corporation, all proximate municipalities and municipal authorities providing the same type of service as the small water or sewer corporation, and the municipalities served by the small water or sewer corporation. The commission shall order the affected small water or sewer corporation to provide notice to its customers of the initiation of proceedings under this section in the same manner in which the utility is required to notify its customers of proposed general rate increases.

14. A public utility that would otherwise be a capable public utility except for the fact that it has fewer than eight thousand customer connections may petition the commission to be designated a capable public utility for the purposes of this section regardless of the number of its customer connections and regardless of whether it is proximate to the small water corporation or small water corporation to be acquired. The commission may grant such a petition upon finding that designating the petitioning public utility as a capable public utility is not detrimental to the public interest.

15. Notwithstanding the requirement of section 386.600, RSMo, to the contrary, penalties for violations of the public service commission law or related commission regulations that have been imposed on a small sewer or water corporation that has been placed in receivership under the provisions of section

*line 44*

393.145 may, upon the order of the court that imposed the penalties, be used to reduce the purchase price paid by a capable public utility for the acquisition of the assets of the subject small sewer or water corporation. In such a case, the commission shall make a corresponding reduction to the ratemaking rate base value of the subject assets for purposes of future ratemaking activities.

16. The commission shall, no later than June 29, 2005, initiate a rulemaking, pursuant to the provisions of its internal rulemaking procedures, to promulgate rules to carry out the purposes of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

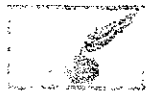
(L. 2005 S.B. 462)

Effective 6-29-05

\*Original rolls contain "IV", a typographical error.

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Missouri General Assembly