

In the matter of Kenneth Jaeger and )  
Blue Lagoon Sewer Corp. ) Case No. SO-2008-0358

2. 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).

3. 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.

4. 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.

5. This case is aimed at effectuating the public policies of environmental protection, consumer protection and safety. Customers of public sewer systems must be provided with safe and adequate sewer service. Inherent in the requirement for safe and adequate service is the condition that the public sewer system must meet all applicable environmental regulations. In its motion, Public Counsel stated that records indicate that Ken Jaeger is unable or unwilling to provide safe and adequate sewer service, Ken Jaeger

has actually or effectively abandoned the Blue Lagoon sewer system and therefore, the statutory requirements for the appointment of a receiver have been met.

6. 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 respectfully submits its response to the Order Directing Response to Motion for Appointment of a Receiver.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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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 23<sup>rd</sup> day of May 2008:

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