



John B. Coffman  
Acting Public Counsel

State of Missouri

Bob Holden  
Governor

Office of the Public Counsel  
Governor Office Building  
200 Madison, Suite 650  
P.O. Box 7800  
Jefferson City, Missouri 65102

Telephone: 573-751-4857  
Facsimile: 573-751-5562  
Web: <http://www.mo-opc.org>  
Relay Missouri  
1-800-735-2966 TDD  
1-800-735-2466 Voice

July 5, 2002

Mr. Dale H. Roberts  
Secretary/Chief Regulatory Law Judge  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

Re: **Case NO. WC-2002-155 (Consolidated with SC-2002-160)**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Public Counsel's Response to Respondent's Request for Hearing and Motion to Stay Briefing Schedule and Motion to Reopen the Record to Admit an Additional Late-Filed Exhibit**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "M. Ruth O'Neill".

M. Ruth O'Neill  
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

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

**Office of the Public Counsel,**  
Complainant,

v.

**Warren County Water and Sewer  
Company and Gary L. Smith,**  
Respondents.

**Case No. WC-2002-155**

**PUBLIC COUNSEL'S RESPONSE TO RESPONDENTS' REQUEST FOR  
HEARING AND MOTION TO STAY BRIEFING SCHEDULE AND MOTION TO  
REOPEN THE RECORD TO ADMIT AN ADDITIONAL LATE-FILED EXHIBIT**

COMES NOW, the Office of the Public Counsel (Public Counsel), and respectfully files this response to Warren County Water and Sewer Company's (Respondents) Request for a hearing and Motion to Stay Briefing Schedule in this case. First, Public Counsel recognizes Respondents' right to cross examination regarding the late filed exhibit, and would not oppose reopening of this matter for further cross examination provided such hearing is held with at least three working days notice and is held prior to July 18, 2002. However, Public Counsel respectfully requests that the Respondents be directed to designate what witness or witnesses it wishes to cross-examine, and that the Respondents secure the attendance of the witnesses at the re-opened hearing. Second, Public Counsel objects to staying the briefing schedule. Public Counsel believes that the request to stay the briefing schedule until some time after a hearing can be held is a ploy to further delay providing the Respondents' customers with relief which is already overdue.

In light of the fact that the record will likely be re-opened in order to allow the Respondent the opportunity for cross-examination, Public Counsel further moves that an additional exhibit, which is attached to this motion as Attachment 2, be allowed to be late-filed and placed into evidence as well. The proposed late-filed exhibit is a copy of a certified cover letter to Gary Smith, Warren County Water & Sewer, dated June 20, 2002, and a Missouri DNR Notice of Violation #1806 SL issued to the Respondent, along with lab reports on effluent samples collected by DNR agent Paul Mueller on May 30, 2002, during his investigation of the fish kill at Incline Village Lake which occurred the week before the evidentiary hearing in this case. This motion is made pursuant to 4 CSR 240-2.110(8).

In support of Public Counsel's position, counsel states the following:

1) On June 17, Public Counsel received a copy of a letter sent by Mohamad Alhalabi, Regional Director of the Missouri Dept. of Natural Resources, to Harold Gibson, of the Warren County Planning and Zoning Office. That letter, attached to this pleading, asks the planning and zoning office to withhold building permits "from lots that would be provided service by Warren County Water & Sewer Company. This would include Incline Village and the part of Shady Oaks Mobile Home Park that is within Warren County." The stated reason for the request is that Mo. DNR believes "that any additional connections to the wastewater collection system will only increase the load on the wastewater treatment plants resulting in greater violations and environmental damage." (Attachment 1).

2) On June 25, 2002, Public Counsel received a copy of a certified letter from Mo. DNR to Gary Smith, dated June 20, which is also attached to this letter. This letter and attachments reveal the results of formal testing on samples gathered by Paul Mueller on May 30, 2002, when he investigated the "fish kill" testified to by Mueller, and other witnesses at the evidentiary hearing in this case. That letter indicates that the effluent samples gathered on that date were "not in compliance with the applicable limitations specified" in the Clean Water regulations (Attachment 2).

3) The witness who created the documents in Exhibit 21 who may be called for cross-examination works for Missouri Department of Natural Resources. The same witness created the documents in the proposed Exhibit which is Attachment 2 of this document. It may take time to arrange for such a hearing. However, this should not be taken as an excuse for this matter to remain unresolved.

4) Assistant Public Counsel M. Ruth O'Neill, who is the attorney involved in this case, will be out of the jurisdiction from July 18 through July 29, and is not available during this time frame. However, Ms. O'Neill believes it would be improper to further delay resolution of this matter by scheduling a hearing after the end of July because of her schedule.

5) The Commission is scheduled to hear the case of Staff v. AmerenUE, EO-2002-1 beginning July 11. Public Counsel anticipates that cross-examination in the Warren County case would not take more than an hour, and could be scheduled on a break from that other case.

6) Public Counsel believes that the briefing schedule should not be delayed because further delay will be detrimental to the public interest. Warren County is contemplating issuing a moratorium on building in the Respondents' service territory, due to the continued unwillingness of the Respondents to take even basic steps to maintain its sewer system. Public Counsel urges this Commission to rule expeditiously in this matter so that the next step may be taken to address this problem. Public Counsel respectfully suggests that the simultaneous "reply" briefs would provide an appropriate forum in which the parties could address any issues presented at the cross-examination hearing.

7) Attachment 2, the proposed late-filed exhibit, consists of the following: a copy of a certified cover letter to Gary Smith, Warren County Water & Sewer, dated June 20, 2002, and a Missouri DNR Notice of Violation #1806 SL issued to the Respondent, along with lab reports on effluent samples collected by DNR agent Paul Mueller on May 30, 2002, during his investigation of the fish kill at Incline Village Lake which occurred the week before the evidentiary hearing in this case. Mr. Mueller testified at the evidentiary hearing that he had taken these samples during the fish kill investigation. Other witnesses, including EPA Special Agent Vic Muschler also testified at the evidentiary hearing regarding the fish kill situation. However, the lab reports were not yet available at the time of the hearing. Public Counsel did not previously move for the admission of this report as a late filed-exhibit because Public Counsel received the information on June 25, 2002, and believed that there would be insufficient time between a motion to reopen the case to admit this additional exhibit and the briefing schedule to allow

the parties to respond. However, as Public Counsel has no objection to a prompt hearing for the purpose of cross-examination on Exhibit 21, there is no reason that cross-examination could not be conducted on both exhibits at the same time.

WHEREFORE, it is respectfully recommended that the Commission take the following actions:

1) That the Commission GRANT the Respondents' request for cross-examination on Exhibit 21, and designate and subpoena the individuals it intends to cross-examine, provided, however, that such cross-examination be completed by 5 pm July 17, 2002; and

2) That the Commission DENY the Respondents' request to delay the briefing schedule in this case, and direct that, instead, the parties may address any matters which arise during the re-opened case in their reply briefs; and

3) That the Commission REOPEN the evidence in this case for the purpose of admitting into evidence the Notice of Violation attached to this Motion as Attachment 2, and provide the Respondent with the opportunity for cross-examination on that exhibit at the same time that it conducts cross-examination on Exhibit 21.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 

M. Ruth O'Neill (#49456)

Assistant Public Counsel

P O Box 7800

Jefferson City, MO 65102

(573) 751-1304

(573) 751-5562 FAX

[roneill@ded.state.mo.us](mailto:roneill@ded.state.mo.us)

Warren County (WPC)  
Warren County Water and Sewer  
MO0098817 & MO0100358

FILE COPY



Bob Holden, Governor • Stephen M. Mahfood, Director

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL QUALITY

St. Louis Regional Office  
9200 Watson Road, Suite 201  
(314) 301-7600  
FAX (314) 301-7607

June 11, 2002

Mr. Harold Gibson  
Warren County Planning and Zoning  
105 S. Market  
Warrenton, MO 63383

Dear Mr. Gibson:

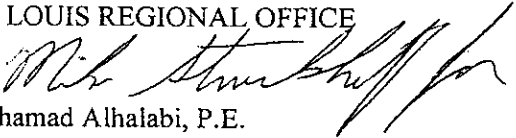
The Missouri Department of Natural Resources has determined that the wastewater treatment facilities (Permits MO-0098817 & MO-0100358) operated by the Warren County Water and Sewer Company, which is serving Incline Village and the Shady Oaks Mobile Home Park, have populations exceeding their design population equivalents. The facilities are not meeting the effluent limits set on them by the Missouri Clean Water Commission and are causing degradation to waters of the state, namely Incline Lake.

At this time, we would like to ask for the aid of the Warren County Planning and Zoning Office by requesting that building permits be withheld from lots that would be provided sewer service by Warren County Water & Sewer Company. This would include Incline Village and the part of Shady Oaks Mobile Home Park that is within Warren County. This office feels that any additional connections to the wastewater collection system will only increase the load on the wastewater treatment plants resulting in greater violations and environmental damage.

Your office's cooperation in this matter is appreciated and will aid in the protection of waters of the state and in the protection of the health of people using Incline Lake for fishing, swimming, and skiing. Should you have any questions or comments, please contact Mr. Paul E. Mueller at the Lincoln County Satellite Office at (636) 528-4779.

Sincerely,

ST. LOUIS REGIONAL OFFICE

  
Mohamad Alhalabi, P.E.  
Regional Director

MA/PEM/jh

c: Vic Muschler, EPA-CID  
Curtis Gateley, WPCP  
Steve Loethen, Public Service Commission  
Ruth O'Neal, Office of Public Council  
Warren County Office of Environmental Sanitation  
Mr. Gary Smith  
Mr. Paul Jeannot

Attachment 1





Bob Holden, Governor • Stephen M. Mahfood, Director

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL QUALITY

St. Louis Regional Office  
9200 Watson Road, Suite 201  
(314) 301-7600  
FAX (314) 301-7607

FILE COPY

June 20, 2002

CERTIFIED MAIL: 7001 0320 0003 6797 5590  
RETURN RECEIPT REQUESTED

Mr. Gary Smith  
Warren County Water & Sewer  
1248 Mimosa Court  
Foristell, MO 63348

Dear Mr. Smith:

On May 30, 2002, Mr. Paul E. Mueller, of this office, was at Incline Village investigating a fish kill in Incline Lake in the bay that Warren County Water and Sewer's wastewater treatment Plant #1 discharges to. As part of the investigation grab samples of the effluent were collected from the treatment plant. The effluent sample has been analyzed a copy of the analytical reports dated June 11, 2002 is enclosed.

The results in the attached report show that the effluent of Plant # 1 (MO0098817) was not in compliance with the applicable limitations specified in Clean Water Commission Regulation 10 CSR 20-7.015(8)(B)1. at the time of sampling. Specifically, the Biochemical Oxygen Demand (BOD) was 63 mg/L, exceeding the monthly average limit of 30 mg/L. And, the Non-filterable Residue (NFR) was 60 mg/L, exceeding the monthly average limit of 30 mg/L.

Discharging pollutants in amounts or concentrations exceeding those specified in the regulations is a violation of the Missouri Clean Water Law (Chap. 644, RSMO 1986 Sec. 644.051.1(3) & 644.076.1 and Missouri Clean Water Commission Regulation 10 CSR 20-7.015(8)(B).

Notice of Violation # 1806 SL is hereby issued for the violation noted above. Please take appropriate corrective action to insure protection of the Waters of the State


Please respond, in writing, by July 15, 2002, to Mr. Mueller with a copy of the response to Mr. Elena Seon at Department of Natural Resources, Water Pollution Control Program, P.O. Box 176, Jefferson City, MO 65102-0176. The response must outline actions taken to correct the violations.

Warren County Water & Sewer  
MO0098817  
June 20, 2002  
Page Two

Be advised that enforcement action has been requested from the Water Pollution Control Program's Enforcement Section, which may include assessment of a penalty to compel compliance.

Sincerely,

ST. LOUIS REGIONAL OFFICE

  
Mohamad Alhalabi, P.E.  
Regional Director

MA/PEM/bk  
*PEM*

Enclosures: Sample report, NOV #1806 SL

c: Eleon Seon, WPCP  
Ruth O'Neal, Office of Public Council  
Steve Loethen, Public Service Commission  
Vic Mushler, EPA-CID  
Leanna Zweig, MDC  
Bob Cook, AGO  
Warren County Office of Environmental Sanitation  
Warren County Planning and Zoning



MISSOURI DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL QUALITY  
**NOTICE OF VIOLATION**

P.O. BOX 176  
JEFFERSON CITY MO 65102

VIOLATION NUMBER	
NO.	1806 SL

DATE AND TIME ISSUED <u>June 20, 2002</u> <input type="checkbox"/> AM <input type="checkbox"/> PM			
SOURCE (NAME, ADDRESS, PERMIT NUMBER, LOCATION) <u>Warren County Water &amp; Sewer</u> <u>1248 Mimosa Court</u> <u>Foristell, MO 63348</u> <u>SW 1/4, Sec 36, T48N, R1W</u>			
MAILING ADDRESS <u>1248 Mimosa Court</u>	CITY <u>Foristell</u>	STATE <u>MO</u>	ZIP CODE <u>63348</u>
NAME OF OWNER OR MANAGER <u>Mr. Gary Smith</u>	TITLE OF OWNER OR MANAGER <u>Owner/President</u>		
LAW, REGULATION OR PERMIT VIOLATED <u>Missouri Clean Water Law (Chapter 644 RSMo 1986) Section 644.051.1.(1) and</u> <u>644.076.1</u> <u>Missouri Clean Water Commission Regulation 10 CSR 20-7.015(8)(B)</u>			
NATURE OF VIOLATION <u>Discharging water contaminants into waters of the State that do not meet the</u> <u>Water Quality Standards or permit limits.</u>		DATE(S): TIME(S):	
SIGNATURE (PERSON RECEIVING NOTICE) <u>SENT BY CERTIFIED MAIL</u>		SIGNATURE (PERSON ISSUING NOTICE) <u>Paul E. Mueller</u> Paul E. Mueller	
TITLE OR POSITION		TITLE OR POSITION <u>Environmental Specialist</u> <u>St. Louis Regional Office</u>	

JUN 13 2002

STATE OF MISSOURI      Bob Holden, Governor • Stephen M. Mahfood, Director  
**DEPARTMENT OF NATURAL RESOURCES**

ENVIRONMENTAL SERVICES PROGRAM

RESULTS OF SAMPLE ANALYSES

Sample Number: 0212962
Lab Number: 02-D1567

Reported To: PAUL E MUELLER	Report Date: 6/11/02
Affiliation: SLRO	Date Collected: 5/30/02
LDPR/Job-Project: QECMT/	Date Received: 5/31/02

Sample Collected by: PAUL E MUELLER, SLRO  
 Facility Identification: MO0098817  
 Sampling Location: WARREN CO WATER & SEWER  
 Sample Description: GRAB SAMPLE @ PLANT #1  
 County: WARREN

Analysis Performed	Results		Analyzed	Method
Non-Filterable Residue	60	mg/L	6/ 5/02	160.2
Specific Conductivity	71.0	umhos/cm	5/30/02	120.1
Comment: Analyzed in Field				
pH	7.80		5/30/02	150.1
Comment: Analyzed in Field				
Temperature - C	19	Degrees C	5/30/02	
Comment: Analyzed in Field				
Biochemical Oxygen Demand	63	mg/L	6/ 5/02	405.1
Ammonia as N	> 6.00	mg/L	5/30/02	350.1
Comment: Analyzed in Field				

Page 2

Lab Number: 02-D1567

Sample Number: 0212962

June 11, 2002

The analysis of this sample was performed in accordance with procedures approved or recognized by the U.S. Environmental Protection Agency.

*Connie Giesing for*

Earl Pabst, Program Director  
Environmental Services Program  
Air and Land Protection Division

c: CURTIS GATELEY, WPC

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 5<sup>th</sup> day of July 2002:

**GENERAL COUNSEL**

Missouri Public Service Commission  
P O Box 360  
Jefferson City MO 65102

**PAUL S DEFORD**

Lathrop & Gage  
2345 Grand Boulevard Suite 2500  
Kansas City MO 64108-2684



---