

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

In the Matter of Staff's Investigation)	
Into the Conduct of the)	
Court-Appointed Receiver for)	<u>Case No. WO-2016-0139</u>
M.P.B., Inc., and Rogue Creek)	
Utilities, Inc.)	

NOTICE OF ABATEMENT ORDER

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Status Report* in this matter hereby states:

1. On December 8, 2015, Staff filed its *Motion to Open Investigatory Docket* with the Commission, asking that the Commission permit Staff to investigate the conduct of the court-appointed receiver, Johansen Consulting, LLC, of three small water and/or sewer utilities, M.P.B., Inc., P.C.B., Inc. and Rogue Creek Utilities, Inc. The Commission issued its Order opening a docket December 16, 2015. Staff filed a *Status Report* February 16, 2016.

2. Staff has been notified that on April 6, 2016, the Missouri Department of Natural Resources issued an Emergency Order to Abate Violations to Rogue Creek Utilities, Inc., giving notice to an emergency which is endangering or could endanger public health and safety with regard to drinking water supplies. A copy of the Order is attached to this pleading.

3. Staff wishes to bring this Order to the attention of the Commission due to its directly relevant nature with this pending investigatory docket. Staff continues to work with the Missouri Department of Natural Resources and Johansen Consulting, LLC, to attempt to resolve the problems the utility is facing.

WHEREFORE, Staff recommends that the Commission take this information and the attached order under consideration; and grant such other and further relief as the Commission considers just in the circumstances.

/s/ Whitney Payne

Whitney Payne
Legal Counsel
Missouri Bar No. 64078

Attorney for the Staff of the
Missouri Public Service Commission
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 7th day of April, 2016, to all counsel of record.

/s/ Whitney Payne

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:

Johansen Consulting Services, LLC

**Proceeding under the
Missouri Safe Drinking Water Law
Sections 640.100 to 640.140, RSMo.**

Order No. 2016-PDWB-076

NOTICE AND EMERGENCY ORDER TO ABATE VIOLATIONS

SERVE BY CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

TO: Dale Johansen, Registered Agent
Johansen Consulting Services, LLC as receiver for Rogue Creek Utilities, Inc.
915 Country Ridge Drive
Jefferson City, Missouri 65109

NOTICE IS HEREBY GIVEN that on April 6, 2016 the Missouri Department of Natural Resources (the Department) has issued this Notice and Emergency Order to Abate Violations to Johansen Consulting Services, LLC, as receiver for Rogue Creek Utilities, Inc., under the Missouri Safe Drinking Water Law and Regulations. This Order is issued under the authority of sections 640.100 to 640.140, Revised Statutes of Missouri (RSMo), and specifically section 640.130.1, RSMo, and 10 CSR 60-1.010(5)(F), 10 CSR 60-6.050, because an emergency exists which endangers or could be expected to endanger the public health and safety with regard to drinking water supplies. Johansen Consulting Services, LLC may be referred to as the Respondent for purposes of this Order.

Continued noncompliance may result in the Department pursuing legal action for injunctive relief, penalties of up to 100 dollars per day for each day or part thereof of noncompliance, and/or any other remedy authorized by law, including but not limited to sections 640.130 and/or 640.131 RSMo and/or 10 CSR 60-6.070.

FINDINGS OF FACT

1. The Respondent, Johansen Consulting Services, LLC, is the receiver for and operator of a Community Public Water System, as defined by section 640.102(6), RSMo and 10 CSR 60-2.015, known as Rogue Creek Utilities, Inc. Mr. Dale Johansen is the primary point of contact for and principal of Johansen Consulting Services, LLC. The Rogue Creek Utilities, Inc. Community Public Water System (the System) has been assigned the identification number MO4036318. The System is located in Washington County, Missouri and serves water for human consumption through pipes and other constructed conveyances to approximately 200 people via an estimated 102 service connections. The source of the water supply is groundwater provided through one drinking water well.

2. A continuous, safe supply of water is vital to basic human health for drinking, cooking, cleaning, bathing, washing, sanitation and other necessary functions.

3. On March 9, 2016, Mr. Johansen told Department staff that the System's water softening unit was not functioning.

4. On March 10, 2016, at the Department's request, staff from the Missouri Rural Water Association performed a technical assistance visit to the System. Missouri Rural Water Association staff repaired the water softening unit the same day.

5. On March 10, 2016, Department staff delivered lead and copper sample kits to five customers at their houses, which are designated sample points for lead and copper, with instructions about how to take the sample on the morning of March 11, 2016.

6. On March 11, 2016, Department staff collected the water samples from the customers and transported them to the laboratory for analysis.

7. On March 11, 2016, Department staff went door-to-door at the system and performed public education to all customers that were home and left public education information at the residences where no one could be reached. The public education information explained that the water softening unit was not functioning and that meant that they may have been exposed to lead if they had used the water for drinking or cooking. Customers were told that the problem was being addressed and that the Respondent had been informed of the need to take action. Customers were also informed that they could get their blood lead level tested at no cost at the Washington County health department.

8. On March 11, Mr. Johansen was directed by Department staff to take daily hardness readings at the System to determine if the water softening unit was functioning and to maintain operational control.

9. On March 12, 13, and 14, 2016, and other dates unknown at this time, Mr. Johansen did not take a daily hardness reading as directed by the Department and did not maintain operational control of the system.

10. On March 14, 2016, the Department notified Mr. Johansen that the System had exceeded the action level for lead based on results from sample AC68947 collected March 11, 2016, which contained 0.0208 milligrams per liter (parts per million) of lead and sample AC68948, which contained 0.0202 milligrams per liter (parts per million) of lead.

When combined they contained a value in the ninetieth percentile of 0.0205 milligrams per liter (parts per million) which exceeded the lead action level of 0.015 milligrams per liter (parts per million) as defined by 10 CSR 60-15.010(3)A. The Department directed Mr. Johansen to provide public education to the System's customers, to take immediate action to ensure the System is in proper working order, to flush the water mains, to encourage customers to flush their taps, and to conduct required water quality monitoring.

11. The Department made additional visits to and inspections of the System on March 16, 17, 22, 23, 25, 28, 31 and April 1 and 4, 2016. Additional samples were collected on March 17, and 23, 2016. Results from sample AC68960 collected March 17, 2016 contained .0202 milligrams per liter (parts per million) of lead, which exceeded the lead action level of 0.015 milligrams per liter (parts per million) as defined by 10 CSR 60-15.010(3)A. Results from sample AC69011 collected March 23, 2016, contained 0.0261 milligrams per liter (parts per million) of lead, which exceeded the lead action level of 0.015 milligrams per liter (parts per million) as defined by 10 CSR 60-15.010(3)A.

12. Based on observations made during these visits and inspections, the Department also finds that the Respondent failed to maintain the source water treatment for lead removal at the System, and that samples collected by the Department from locations in the distribution system on March 11, March 17, and March 23, 2016, exceeded the lead action level of 0.015 milligrams per liter (parts per million) as defined by 10 CSR 60-15.010(3)A.

13. The Department also finds that Respondent does not have a certified chief operator to operate the System.

14. The consumption of lead in water is a known threat to human health.

15. An emergency exists for the reasons stated herein which endangers or could be expected to endanger the public health and safety with regard to drinking water supplies, in that residents of Rogue Creek have been exposed to water that may have contained lead in excess of action levels.

16. This Order is necessary to abate this threat to public health and safety.

STATEMENT OF VIOLATIONS

Violations of the Missouri Safe Drinking Water Law and its implementing regulations addressed in this Order include:

17. The Respondent is in violation of 10 CSR 60-14.010(4)(A) and 10 CSR 60-14.010(4)(A)1 for failure to place the direct supervision of the System under the responsible charge of a chief operator that possesses a valid certificate equal to or greater than the classification of the System (Treatment C and DS I or higher).

18. The Respondent is in violation of 10 CSR 60-4.080(1) and 10 CSR 60-4.080(3) for failure to conduct required daily hardness tests to maintain operational control of the treatment process.

19. The Respondent is in violation of 10 CSR 60-15.040(2)B for failure to maintain source water treatment for lead removal.

20. The Respondent exceeded the lead action level on the dates stated herein of 0.015 milligrams per liter as defined by 10 CSR 60-15.010(3)A.

21. The Respondent is in violation of 10 CSR 60-15.040(2)D for failure to maintain lead levels below the maximum permissible concentrations at each sampling point monitored as required by 10 CSR 60-15.090.

22. The Respondent is in violation of 10 CSR 60-4.010(7)D and 10 CSR 60-4.080(5) for failure implement a change, to provide an alternate source of water to customers, as directed by the Department following the ongoing investigation by the Department that began March 9, 2016, when the source water treatment water softener was found to be unreliable and not providing treatment.

CORRECTIVE ACTIONS

23. This Order is effective immediately as provided in section 640.130.1, RSMo, and the Respondent shall comply with this Order even if the Respondent appeals this Order. The Department hereby Orders the Respondent to complete each of the following corrective actions to abate the threat to public health and safety:

24. The Respondent shall immediately supply the customers of the System with a temporary alternate source of potable, safe drinking water. Respondent shall notify the customers that an alternate water supply is available on request. The alternate water supply must be: (1) provided by a licensed water distributor; (2) purchased commercial bottled water; or (3) provided by another Missouri public water system that meets the Missouri Safe Drinking Water Law and Regulations. This alternate water supply shall be made available at no additional cost to all users of the System as needed for drinking and cooking until the Respondent receives written notification from the Department that an alternative water supply is no longer necessary. Upon request from a customer, the Respondent shall provide, at no additional charge, at least one gallon of potable water daily per person at the club house or other central location at the System, which is easily accessible to all customers. The Respondent shall report the amount of water supplied in gallons to the Department each day as long as the alternative water supply is required by the Department.

25. The Respondent shall immediately put the System under the responsible charge of a chief operator, certified by the Department and in good standing, at the Treatment C and DS I level or higher for drinking water. The name of the certified operator shall be sent to the Department immediately.

26. The Respondent shall at all times maintain treatment for source water for lead removal and maintain operational control of the water softener. The lead concentration at any sample point out in the distribution system shall not exceed 0.015 milligrams per liter (parts per million).

27. The Respondent shall immediately begin providing the Department with daily water hardness readings from the System taken at locations in the distribution system. The hardness shall be reported in parts per million or milligrams per liter and analyzed according to 10 CSR 60-4.080 and 10 CSR 60-5.010.

28. The Respondent shall provide a written response by May 2, 2016 to the Department that addresses Notice of Violation #SE1686, issued by the Department April 1, 2016. The response shall describe how each violation will be addressed.

SUBMISSIONS

29. All other documentation submitted to the Department for compliance with this Order shall be submitted on or before deadlines established in this Order to:

Mr. Lance Dorsey
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

30. The Department reserves the right, and nothing herein shall be construed so as to limit the Department's authority, to take any further appropriate actions to end this emergency, including the pursuit of injunctive relief to compel compliance and/or to impose penalties for past or future violations including those described herein.

31. Any request for an extension of time or to other modification of this Order must be submitted in writing to the Department within ten business days of this Order. The Department will consider the merits of any such request and will respond in writing. Only written modifications of this Order will be effective.

32. This Order shall apply to and be binding upon the Respondent and its agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the Respondent. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not relieve the Respondent of its obligation to comply with this Order.

NOTICE OF APPEAL RIGHTS

33. Pursuant to section 640.130.5 RSMo, this Order may be appealed within 30 days to the Circuit Court of Washington County, Missouri.

SIGNATURE AUTHORITY

SO ORDERED this 6th day of April, 2016 by:

DEPARTMENT OF NATURAL RESOURCES

A handwritten signature in cursive script, reading "John Madras", is written over a horizontal line.

John Madras, Director
Water Protection Program

c: Mr. Jackson Bostic, Southeastern Regional Office
Mr. Tim Duggan, Missouri Attorney General's Office

