

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

Ben F. Weir,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. WC-2006-0107</u></b>
	)	
Folsom Ridge, LLC,	)	
	)	
Respondent.	)	

**NOTICE OF COMPLAINT**

Issue Date: September 12, 2005

Folsom Ridge, LLC  
Big Island Homeowners Association (BIHOA)  
P.O. Box 54  
Longmont, Colorado 80502

**CERTIFIED MAIL**

On September 9, 2005, Ben F. Weir filed a complaint with the Missouri Public Service Commission against Folsom Ridge, LLC, a copy of which is enclosed. Pursuant to 4 CSR 240-2.070, Respondent Folsom Ridge shall have 30 days from the date of this notice to file an answer or to file notice that the complaint has been satisfied.

In the alternative, the Respondent may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether or not the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer is due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be notified

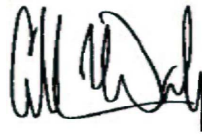
of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been mailed to the Complainant.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name and title.

Colleen M. Dale  
Secretary

(S E A L)

Dated at Jefferson City, Missouri,  
on this 12th day of September, 2005.

Pridgin, Regulatory Law Judge

Copy to: Ben F. Weir  
2162 Big Island Drive  
Roach, Missouri 65787

BEFORE THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF MISSOURI

RECEIVED

SEP 09 2005

Ben F. Weir  
Complainant

Vs.

UTILITY OPERATIONS  
DIVISION

Folsom Ridge, LLC (Owning and Controlling the BIHOA)  
Respondent

FILED<sup>2</sup>

SEP 09 2005

Missouri Public  
Service Commission

**COMPLAINT**

1. Complainant resides at 2162 Big Island Drive  
Roach, MO 65787
2. Respondent: Folsom Ridge, LLC  
Big Island Homeowners Association (BIHOA)  
P.O. Box 54  
Longmont, CO 80502

Is "acting" as a public utility by providing and "controlling" service to property owners and homeowners on Big Island, Camden County, Roach, MO 65787.

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

After nearly seven (7) years of witnessing AND documenting the most unbelievable case of corporate abuse, misrepresentation, lack of responsibility and disregard for the public's health and safety as well as threats to my own personal well being and potential negative effects on my property values, as well as the lack of enforcement action by the Department of Natural Resources (DNR) to enforce their own regulations, I have been left with no choice, and therefore am filing this "Formal Complaint" with the Public Service Commission of the State of Missouri in hopes they will be able to bring a sense of law and order to Big Island and help protect the residents' public drinking water supply from being further compromised affecting their health and safety.

I grew up as a young boy on Big Island back in the early 1960's when my parents bought land and built one of the first true "cabins" there. I loved coming to the lake on weekends so I could ski, fish, tromp through the woods and later enjoyed helping my son "grow up" as a youngster on Big Island as well. My wife and I finally tore down the old cabin in 1990 and built a modern home with a new septic system and water well. We currently own about 160' of lakefront property in what is commonly called "Weir Cove". What a great place it was to come to on the

weekends until Folsom Ridge LLC showed up in 1998 with all their "verbal promises" of how great things were going to be...yes, "too good to be true" especially since nothing was in writing, nothing was formally outlined or documented. Unfortunately, many of my friends and neighbors (but not me since I didn't buy the sales pitch), wrote checks for \$4,800 to get a sewer tap for a proposed "state of the art" community system that would be one of the greatest things to ever happen on Big Island. There were all kinds of other verbal promises as well. There were no documents to sign (other than their checks sent to the Central Bank), and there was no formal HOA with written covenants or bylaws to read and realize what liabilities or restrictions they were committing themselves to. It was strictly a "voluntary" deal based on verbal promises. In my opinion, little did they know that they were buying into seven (7) years of controversy, illegal activities, financial liabilities and an organization (BIHOA) which they have no real control of and does whatever the developer, Folsom Ridge, LLC, decides it needs to do usually at the expense of the individual homeowners while benefiting the developer.

Thankfully, I did not get "sucked in" on that original "too good to be true" sales pitch back in 1998 and didn't pay a tap fee for either sewer or water. Therefore, I can truthfully say that I have not joined the BIHOA and cannot even be "considered" a member as many of my neighbors have told me they are "considered" even though they NEVER signed the covenants and bylaws. They could just as easily be "considered" members of the Communist Party. Thus, I have been able to witness and document (in an unbiased manner) the ongoing controversies involving Folsom Ridge, LLC, the concerned homeowners as well as the unresponsiveness and reluctance of the DNR to protect the citizens of Missouri by not enforcing their own regulations even when presented with documented evidence by the property owners who have the most to lose in all of this. Actually, several homeowners have done a better job of knowing and exposing the developer's abuse and disregard of DNR regulations than the agency itself has done. In my opinion, it's been a shameful display of their responsibilities to the citizens of Missouri in NOT protecting our public drinking water resources by failure to enforce their own regulations. Maybe DNR really should stand for "Don't Need Regulations."

I have included as separate "exhibits" numerous documented instances of misbehavior, potential fraud (deception) by the developer and his associates, as well as numerous letters I have written to the developer's representatives including a board member (2/4/04) and a partner (2/14/04) imploring them to finally help resolve the issues on Big Island and take some corporate responsibility for their misbehavior. I also wrote three lengthy letters (10/22/03; 11/18/03; 12/22/03) to a representative of the DNR pleading for that agency to finally do the right thing and investigate the concerned homeowners' claims about the improper and illegal installation of the sewer and water mains in the same



trench creating a potentially dangerous health hazard which compromised the safety of the public drinking water supply of the residents of Big Island. It's incredible but sad to report that it took almost five (5) years to convince the DNR, despite documented photos and other evidence, that the developer actually had lied to them and had indeed illegally put the sewer and water in the same trench exactly the way the concerned homeowners had witnessed, documented and reported to them. So much for the DNR protecting the best interests of your own state's citizens while protecting those of an out of state developer.

In my opinion, the "straw that broke this camel's back", after witnessing seven (7) long years of all this foolishness and lawless behavior, and which finally convinced me that the PSC needed to be involved in investigating the "out of control" management of the BIHOA by Folsom Ridge, LLC, were the two most recent documented DNR violations dated June 28, 2005 (exhibits attached). One was actually a repeat offense of their first violation back in 1998 (construction without a permit) dealing with the "off the Island" extension of the Phase I Water Main being reinstalled by the developer while operating under a directive of the state-mandated Settlement Agreement imposed on Folsom Ridge, LLC in April 2004 (exhibits attached).

The second series of violations dated June 28, 2005 involved the community water supply system itself and the unsatisfactory features found during the DNR inspection including: the failure to collect routine samples from the distribution system; the dispensing of water without obtaining a written permit; the failure to develop a written total coliform bacteria sample siting plan as well as construction deficiencies. All of these could potentially compromise the safe distribution of the residents' public drinking water supply.

To the best of my knowledge, even though the DNR has been asked numerous times to enforce penalties on Folsom Ridge, LLC for these most recent violations, especially the "repeat violation" committed while operating under the 2004 Settlement Agreement, there still has been nothing done by the DNR to punish the developer for these offenses. Don't Need Regulations?

More importantly, the extension of the "off the Island" water main to other Folsom Ridge, LLC development property was apparently done without the prior knowledge not only of the DNR but also of the members of the BIHOA, and those members did not have the opportunity to vote on this extension of their own water supply system even though there was an official ("looks like a quorum") annual meeting held May 7 at which time that issue was never brought up in front of those in attendance for their approval. Why the cover up? Why no disclosure of what was going to happen to their drinking water supply? Was the developer afraid of a negative vote or some homeowners finding out in advance of a potential violation for a change instead of having to report it to the DNR after the

fact? Or did the developer consider it none of the homeowners business even though the homeowners will eventually assume the liabilities for that extension.

Also the developer has disclosed none of these most recent violations to the members of the BIHOA. In my opinion, this clearly indicates a degree of "control" by the developer of the BIHOA to keep all matters concerning the operation of the sewer and water community system (whether safe or otherwise) a secret. There can be no representation by the homeowners of their own organization under such a dictatorial arrangement. In my opinion, I believe the developer considers Big Island to be his own private kingdom where the laws of the state of Missouri and common decency including open meetings and disclosures are obviously not a high priority or respected.

In my opinion, I further believe the documented exhibits attached to this "Formal Complaint" speak for themselves and clearly show a pattern of seven (7) years of negligence and corporate misbehavior by Folsom Ridge, LLC which has severely compromised the safe operation of the community drinking water supply potentially affecting the health, safety and well being of the Big Island residents as well as their property values.

WHEREFORE, complainant now requests the following relief: That the PSC investigate the claims of this petition and others they've received from Big Island residents to determine if a temporary injunction, halting the transfer of liability of the BIHOA water and sewer system to the actual members of the association, as the continuing authority, from Folsom Ridge, LLC, on September 1, 2005, and the transfer of ownership of the same on September 1, 2006, until a determination and ruling can be made by the PSC as to the BIHOA, and its legal operation as a HOA (meeting all those requirements) or its legal operation as a public utility (meeting all those requirements). More importantly, that the PSC also investigate the most recent violations of the Missouri Safe Drinking Water Regulations, and determine if additional punishment, including fines and restrictions on further development, should be assessed against an out-of-state developer who has a well documented seven (7) year history of disrespect for the laws of the State of Missouri as well as an arrogant attitude toward the residents of Big Island who are courageously trying to protect their family's health, safety and property values.

Respectfully submitted,

A handwritten signature in black ink that reads "Ben F. Weir" followed by the date "(9/8/05)" in parentheses. The signature is written in a cursive, flowing style.

Ben F. Weir  
2162 Big Island Drive  
Roach, MO 65787

## Concerned Homeowners of Big Island Document Seven Years of Bad Behavior

As the attached evidence points out, Folsom Ridge LLC, Longmont, Colorado, developer of Big Island real estate, has been a less than "model corporate citizen" to residents of Camden County and the State of Missouri.

Since 1998, there have been numerous instances of uncivil-type behavior from the project manager (threats, harassment and even physical violence) as well as disrespect for the environment (trees cut down and never replanted; illegal dumping; unsupervised fires set) as well as documented disregard for state laws and regulations resulting in numerous violations, legal actions, and homeowner complaints over the past seven (7) years including:

(1) Starting construction/installation of the water and sewer system without a permit from the Missouri Department of Natural Resources (DNR).

(November 19, 1998)

(2) Issued a Notice of Violation #1315 by the DNR for failure to construct water lines and sewer lines in accordance with approved plans.

(May 25, 1999)

(3) Received a reprimand by the Camden County Road and Bridge Department for digging up a utility crossing to repair a leaking line, tearing up new asphalt, without a permit.

(Sept. 26, 2000)

(4) Responding to issues raised by the Attorney General of Missouri, specifically that the wastewater system was not built as submitted to the Department of Natural Resources, answer was given that the DNR agrees that the system was not constructed as approved.

(April 17, 2002)

(5) Received DNR Complaint JC 011193 for improper disposal (dumping) of roofing shingles on top of the hill near the wastewater treatment plant and public drinking water supply.

(October 18, 2001)

(6) Settlement Agreement (SA) requiring Folsom Ridge, LLC to correct the violations observed during the digging of the test pits on January 12, 2004 which proved that the water and sewer lines have been improperly installed per DNR regulations.

(April 26, 2004)

(7) Issued a Notice of Violation #11210SW by the DNR for causing or permitting construction, installation or modification of community public water supply without written authorization by extending Phase I Water Main "off the Island".

(June 28, 2005)

(8) Issued a series of violations of the Missouri Safe Drinking Water Regulations by the DNR. Included in these were: failure to collect routine samples from the distribution system; dispensing of water without obtaining a written permit to dispense water; and failure to develop a written total coliform bacteria sample siting plan. In addition, several construction deficiencies in the public water system were also noted.

(June 28, 2005)



Received 6/2

STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

Niel Carahan, Governor • Stephen M. Mahford, Director

DIVISION OF ENVIRONMENTAL QUALITY

P.O. Box 176 Jefferson City, MO 65102-0176

EXHIBIT

#1

Camden County  
Big Island Home Owners Association  
Review No. 31182-98  
PWS ID # MO 3031265

November 19, 1998

Lake Professional Engineering Services, Inc.  
P.O. Box 27  
Camdenton, MO 65020

ATTN: James O. Jackson, P.E.

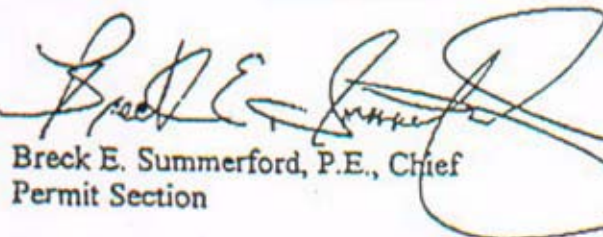
Dear Mr. Jackson:

We are in receipt of your letter dated November 17, 1998 and plan sheet of a trench detail for the water and sewer line construction for the Big Island Home Owners Association, Camden County, Missouri. In cases where it is not practical to maintain a ten foot separation, the department may allow deviation on a case-by-case basis, if supported by data from the design engineer. The supporting data must be provided. Also, any revisions to the plans and specifications must have the seal of a professional engineer affixed.

Please be advised that construction of the water and sewer must be stopped immediately, until such time a construction permit is issued. Should you have any questions with regard to this matter, feel free to give me a call.

Sincerely,

PUBLIC DRINKING WATER PROGRAM

  
Breck E. Summerford, P.E., Chief  
Permit Section

BES:rme

c: City of Osage Beach  
Big Island Home Owners Association  
Jefferson City Regional Office

**LAKE PROFESSIONAL ENGINEERING SERVICES, INC.**

CONSULTING ENGINEERS

P.O. Box 27

Cadenton, Mo. 65020

JAMES O. JACKSON, P.E.

573-480-0508  
573-873-3898

BOWDEN CAMPBELL, EIT 573-480-7100

November 17, 1998

Mr. Breck E. Summerford, P.E.  
Chief, Engineering and Compliance Section  
Public Drinking Water Program  
P.O. Box 176  
Jefferson City, MO 65102

#ZA

RECEIVED

NOV 19 1998

PUBLIC DRINKING WATER  
PROGRAM

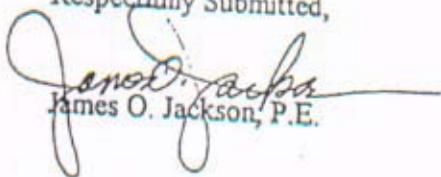
RE: Big Island Home Owners Association, Review No. 31182-98

Dear Mr. Summerford:

Attached is a copy of the drawing furnished the Jefferson City Regional Office concerning how the water and sewer lines have been constructed in the same trench. You also asked for the amount of line already installed and that figure is 4600'. As I indicated to you on the telephone yesterday, I will be glad to furnish any additional information to you, at any time.

If there are any questions please feel free to contact me.

Respectfully Submitted,

  
James O. Jackson, P.E.



## The "Magnificent 7"

### TRENCH EXCAVATION

**B.1-3 Horizontal Separation of Water and Sewer Mains** -- Whenever possible, the water mains shall be laid ten feet (10') horizontally from any existing or proposed drain or sewer line. **Should conditions prevent a lateral separation of ten feet (10') water mains may be laid closer than ten feet (10') to a storm or sanitary sewer, provided the water main is laid in a separate trench, or on an undisturbed earth shelf located on one side of the sewer at such an elevation that the bottom of the water main is at least eighteen inches (18") above the top of the sewer.**

Which ones are sewers? Which ones are water?





May 25, 1999  
ONR Violation  
Gannaways

STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL QUALITY

Jefferson City Regional Office  
210 Hoover Road P.O. Box 176 Jefferson City, MO 65102-0176  
(573) 51-2729  
FAX (573) 51-0974

May 25, 1999

CERTIFIED MAIL # Z 290 136 189  
RETURN RECEIPT REQUESTED

Fulsum Ridgelle dba Big Island  
c/o David Lee, Management  
HCR 67, Box 680  
Roach, MO 65787

Dear Mr. Lee:

Enclosed is a Notice of Violation number 1315 JC being issued to Fulsum Ridgelle dba Big Island for failure to construct water lines and sewer lines in accordance with approved plans. On April 23, 1999, inspection of work being conducted on the water and wastewater lines for the Big Island in Camden County found illegal water and sewer mains being constructed. Instead of constructing individual one-inch PVC service lines for water and wastewater to each home, one inch lines were being placed to serve up to three homes. This would make the lines by definition water and wastewater mains, which have to be at least two-inch PVC and receive prior approval by the Department.

You stated at the time of my inspection that the change from single service lines to lines serving up to three homes was a misunderstanding of the requirements and what was approved. You have since stated to me that all work has been corrected. To resolve this matter, written certification needs to be submitted by your engineer verifying that all water and wastewater construction was corrected/completed in conformance with approved plans. Also, I noted that the water and wastewater service lines were being placed in the same trench. Separation of water and sewer service lines should meet national plumbing code standards.

#5


Violation 1315 JC

Mr. David Lee  
May 25, 1999  
Page Two

I appreciate your cooperation in this matter. If you have any questions regarding this matter, please contact me at (573) 751-2729.

Sincerely,

JEFFERSON CITY REGIONAL OFFICE

  
Stephen P. Jones, P.E.  
Environmental Engineer

SPJ/bg

Enclosure

c: John MacEachen, Public Drinking Water Program  
Breck Summerford, Public Drinking Water Program  
Jerry Croy, JCRO





MISSOURI DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL QUALITY

NOTICE OF VIOLATION

P.O. BOX 176  
JEFFERSON CITY, MO 65102

VIOLATION NUMBER

1315

DATE AND TIME ISSUED

May 21, 1999

☐ A.M.

☐ P.M.

SOURCE (NAME, ADDRESS, PERMIT NUMBER, LOCATION)

Pulaski Riddelle dba Big Island

MAILING ADDRESS

HCIR 67, Box 680

CITY

Boach

STATE

MO

ZIP CODE

6571

NAME OF OWNER OR MANAGER

David Lee

TITLE OF OWNER OR MANAGER

Manager

LAW, REGULATION OR PERMIT VIOLATED

Construction of a sewer main without a permit 10 CSR 20-6.010(1)(A) & (4)(A)

Construction of a water main without a permit 10 CSR 60-3.010(1)(A)

NATURE OF VIOLATION

DATE(S):

April 23, 1999

TIME(S):

Construction of illegal water and wastewater mains.

SIGNATURE (PERSON RECEIVING NOTICE)

SIGNATURE (PERSON ISSUING NOTICE)

TITLE OR POSITION

TITLE OR POSITION/DNR REGION

Environmental Engineer



Camden County  
Road & Bridge  
P.O. Box 960  
Camdenton, MO 65020

9/26/00

#3

#8

Highway Administrator  
Gary L. Webster

South District Supervisor  
William J. Randle

North District Supervisor  
Steven Williams

September 26, 2000

Folsom Ridge LLC  
P.O. Box 54  
2020 Terry Street  
Suite A  
Long Mont, CO 80501

Guard Rail In  
Front Of Big  
Island Sign!

RE: Big Island

Mr. Golden,

We have some problems emerging with Big Island Development. The utilities crossing our county road were not properly installed. When construction on utilities was started, Mr. Lee's and the contractor were informed how we expected them to be installed. This was ignored. Now Mr. Lee's has dug up a utility crossing to repair a leaking line, tearing up new asphalt, without a permit. The Big Island rock sign was built partially on County easement. Mr. Lee's agreed to install a guard rail in front of the sign to keep people from sliding into the sign on slippery roads. This has not been done.

Until Mr. Lee's and any contractor hired by him decides to comply with County rules and regulations, no additional roads will be accepted by Camden County on Big Island. If Mr. Lee's continues to dig up new asphalt, your corporation will be billed for a complete new overlay. If the guard rail is not installed in front of the sign, said sign will be removed.

"Another Reprimand"

Phone 678-346-4471

Fax 678-346-0670





4/17/02

RECEIVED

APR 18 2002

## ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL

April 17, 2002

Lewis Z. Bridges  
Bridges, Cisar and Mizell, LLC  
Attorneys at Law  
2140 Bagnell Dam Boulevard, Suite 203  
Lake Ozark, MO 65049

Dear Mr. Bridges:

I have been asked to respond to your letter dated February 21, 2002 letter. I have been provided with information from the Department to respond to the issues you set out in your letter concerning the Big Island Subdivision wastewater treatment facility. The issues will be addressed as they were presented in your letter.

1. The developers of the subdivision began construction of water and sewer systems prior to obtaining any permit.

*\*See #1A EXHIBIT*

**Response:** The public drinking water construction permit application was received on October 5, 1998 and the permit issued on December 18, 1998. The wastewater construction permit application was received on August 7, 1998 and the permit was issued on January 5, 1999. If the contractor started work around November 1998, the department does not have any verification of this. *Jim Jackson Letter To Summerford Dated 11/22/98*

*\*NOT TRUE*

2. The Department of Natural Resources allowed late filing.

*See Above*

**Response:** The department is not aware of any construction before filing of the applications for construction permits. Ultimately, the department was satisfied with the applications and issued both the water and wastewater construction permits.

3. The system was not built as submitted to the Department of Natural Resources.



<sup>1</sup>KEY!  
**Response:** The department agrees that the system was not constructed as approved

4. The Department of Natural Resources has now allowed the developer and/or Association to submit "as-built" drawings.

**Response:** The system was not built in accordance with approved plans and "as-built" drawings were submitted to show the changes made during construction. The department regularly receives "as-built" drawings for changes on construction projects. It was not unusual to have done so in this project.

5. The "as-built" drawings do not accurately depict the system.

**Response:** The department depends on the engineer to certify the construction and submit as-built drawings. If your clients have additional knowledge about the system, please provide this information directly to:

Keith Forck, Engineer  
Department of Natural Resources  
210 Hoover Drive  
Jefferson City, MO 65102

6. The system has in the past, and continues to leak, causing sewage to encroach on residents' property.

**Response:** The only major leak that the department has been made aware of is a leak that was found in the discharge line. The department is aware that there was trouble in locating the leak. It is currently believed that most of the suspected leak locations are groundwater surfacing and have not been confirmed as leaks from the wastewater collection system.

7. The Association is operating as an unlicensed public utility by providing sewage services to non-members. In addition, the original developer contracted with individuals and agreed to provide such services without authority to operate a public utility. None of my clients agreed to join the Association and are not bound by any of the terms of the Association's Articles of Incorporation or Revised Restrictions and Bylaws. They were not required to join the Association under the terms of their original agreement with the Developer.



**Response:** In accordance with 10 CSR 20-6.010(3)(B)5(IV), everyone connected to the wastewater treatment system shall be bound by the rules of the association, and thus be a member. If your clients do not want to join the association, then this is a matter that needs to be resolved between your clients and the Homeowners' Association.

8. Negotiations were conducted between my clients and the Developer concerning revisions to the Restrictions but no agreement was achieved. My clients are concerned with legal and financial liability associated with the system. In addition to the problems noted above, we are aware that several homes were connected to and used the system prior to an operating permit being issued on February 25, 2000. In addition, no functioning homeowners' association existed until July 2000 when the first Board of Directors was elected.

**Response:** On July 16, 1998, the Certificate of Incorporation was recorded for the homeowners' association. Whether or not the Homeowners' Association was functioning with regard to the annual meeting is an issue amongst the homeowners because the Homeowners' Association has been in good standing with the Office of the Secretary of State since its inception. On October 14, 1999, an operating permit application for the wastewater treatment system was received. Normal procedures is that once an application is received the system may start operating to verify that the system is complete and operational before the operating permit is issued.

9. The system is overloaded now if we include all persons connected or who have a contractual right to connect.

**Response:** The department addressed this concern through a condition in the June 23, 2000 construction permit. According to Construction Permit 26-3390, the wastewater treatment plant expansion shall be complete and operational, prior to the construction of the eighty-first house within the Big Island Development. The eighty houses within the Big Island Development will be considered to be the original existing thirty-six houses along with the construction of forty-four new houses or connections.

If you have additional information or additional questions, please contact me.  
Sincerely,

JEREMIAH W. (JAY) NIXON  
Attorney General

  
DEBORAH NEFF  
Assistant Attorney General

c: Water Pollution Control Program  
Jefferson City Regional Office



# EXHIBIT # 5



MISSOURI DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL QUALITY  
COMPLAINT INVESTIGATION INFORMATION

## INTERVIEW INFORMATION

REFERRED FROM

ROUTING	INITIAL	DATE RECEIVED	Program Assigned
Interviewer	PT	10/18/01	SWP
Data Entry	2PM	10-18-01	Complaint No. 2-0001193
Investigator	2PM	11-30-01	File No. 2-0001193
Final Data Entry	2PM	11-5-01	County Name - Christian
			Facility ID #

What is the complaint about? Improper disposal of shingles on one of the newest developments on Big Island near 2 homes on the island. River in the area. The complainant owns an adjacent house (box 836) that is for sale. The shingles are being disposed of on the property where disposal is occurring. The shingles are owned by another person. 2 other developers. Mr. Lee's wife kicked out of house by another person.

What is the location of the problem? Corner of 94th & Highway 109 (aka Big Island Drive) - Go 1/4 mile - till you go over a causeway and you're on the island - take new road to left & look for pros. Trks & bell & WTF - Shingles are being disposed of on the island. 1/4, 1/4, Sec, Twp, Rge, Co, lat, long the sand filter.

Who or what source is the probable cause of the complaint?

Name	David Lees / Tim Miller Construction	HOME TELEPHONE NO.
Address		
City/State/Zip		BUSINESS TELEPHONE NO. - Cell
		573-216-1303

## INVESTIGATION

Date of Investigation 11-1-01

Observation/Findings One amount of wood chips & shingles was observed. Found some partially buried shingles - a complaint on the site.

Conclusion/Recommendations Recommended that Mr. Miller fill out a "Statement of Closure" and submit to the department after Dept. approval have the dump recorded on the property deed. OR Mr. Miller can remove the material and properly dispose of it at a permit landfill operation. 11-2-01. Phone call from Mr. David Lees. Stated that he was concerned that they could not buy shingles. Mr. Lees stated he will be out of the state for the next two weeks but will have them removed the week of Thanksgiving.

Was there environmental impact on: (Check one or more)

☐ Human Health
 ☐ Water
 ☐ Air
 ☒ Land
 ☐ None

If water was impacted, name affected waters if available.



# ALL RELATING TO AND RESULTING IN SETTLEMENT AGREEMENT

Meeting with Ms. Elena Seon  
(Water Pollution Control/DNR Representatives)

July 31, 2003

By January 1999, 39 existing property owners of Big Island had invested \$4,800 each (\$187,200 total) to help fund the construction of a community sewer and water system by the developer, Folsom Ridge LLC. The payment ensured the homeowners the right to hook up to the system at their convenience at sometime in the future.

The homeowners assumed that these utilities would be installed according to the codes and regulations established by the Missouri Department of Natural Resources (DNR) and the National Plumbing Codes of the United States.

A dedicated group of "Concerned Homeowners of Big Island" refuse to this day, July 31, 2003, to accept the future responsibility and liability for these sewer and water lines that were not installed properly according to the codes and regulations required by DNR as stated in paragraph B.1-3 of the construction permit which was issued to Folsom Ridge LLC on Jan. 5, 1999.

The following documents establish a historical timeline of total negligence and disregard of DNR regulations by the developer, Folsom Ridge LLC, the project engineer, Jim Jackson, and the project manager, Dave Lees.

1. **Nov. 19, 1998**--Letter from DNR Breck Summerford replying to Jim Jackson, head engineer for the developer, Folsom Ridge LLC, stating that "sewer and water line construction must stop immediately until you receive a permit, and where it is not practical to maintain a 10 ft. separation, the DNR might allow deviations on a case-by-case basis."
2. **Nov. 22, 1998**--Jim Jackson, head engineer, sent a letter to Breck Summerford, DNR, with excuses for starting construction without a permit and admitting the installation of sewer and water lines in the same trench.
3. **Dec. 29, 1998**--Jim Jackson, head engineer, replies to B. Summerford's letter with a detailed drawing of the water line installed on an offset separated earthen shelf as requested by B. Summerford representing the DNR.
4. **Jan. 5, 1999**--DNR issues construction permit with required installation procedures including the separation of sewer & water lines.
5. **May 25, 1999**--A reprimand from DNR Steve Jones issued for improper installation of sewer and water lines in the same trench.
6. **Feb 23, 2000**--Operating permit and letter from Steve Jones stating that DNR was unable to inspect system but also stating that if at any time in the future that sewer and water lines are found, not installed in accordance with drinking water standards, that the DNR has the right to require alterations of the system to bring it into compliance with standards.
7. **June 23, 2000**--Memo to File from DNR Engineer Tim Neal stating that a variance had been given for the drinking water line to be installed on a undisturbed shelf. Dave Lees, project manager and partner for Folsom



Ridge LLC, stated that in fact the water line was laid on a separate shelf and that the shelf was comprised of compacted material. Dave Lees also stated that all new home construction would have a 10 ft. separation of sewer and water lines.

8. Sept. 26, 2000--Gary Webster, Camden County Road Supervisor, sent a letter to Reggie Golden, managing partner of Folsom Ridge LLC, reprimanding the corporation for digging a trench across the county road without proper permission to do so as well as totally ignoring the county's directions on the proper use of sleeves to encase lines under the roads. This action came after Mr. Dave Lees, project manager, dug up the county's asphalt road at a utility crossing to repair a leak without a proper permission to do so.
9. Nov. 17, 2000--Reggie Golden, representing the developer, Folsom Ridge LLC, sent a letter to Big Island Homeowners in which he stated "We have dug several holes and have verified proper installation of water and sewer lines".

And finally, on April 17, 2002--The Missouri Attorney General Office's Deborah Neff, in response to the "Concerned Homeowners of Big Island" Attorney Lewis Bridges' complaint that "the system was not built as submitted to the DNR" replies, "The department (DNR) agrees that the system was not constructed as approved".

These facts speak for themselves. The total liability and responsibility for the Big Island Homeowners Assn. Sewer and Water System must become the sole financial responsibility of the developer, Folsom Ridge LLC, and NOT the individual homeowners who have been deceived.

The "Concerned Homeowners of Big Island" request the Department of Natural Resources (DNR) to require the developer, Folsom Ridge LLC, to comply with DNR regulations and codes.

The Big Island Community Wastewater/Water System must be corrected to be in compliance with the DNR regulations and codes.



# The Examiner

## Eastern Jackson County's Daily Newspaper

Ben F. Weir Jr.  
Publisher  
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October 22, 2003

#1

Elena Seon  
Environmental Specialist  
Missouri Department of Natural Resources  
Water Pollution Control Program  
P.O. Box 176  
Jefferson City, MO 65102-0176

Ms Seon,

It has come to my attention that Clinton Finn, environmental engineer from the DNR's Southwest Regional Office in Springfield, will oversee the digging of various test holes on October 30th to determine whether the water and sewer lines of the Big Island (Camden County) Community Wastewater System were improperly constructed in the same trench.

This concern was discussed at length with you, Mike Tharpe, Clinton Finn and State Representative Dr. Wayne Cooper on July 31 by several members of the "Concerned Homeowners of Big Island Committee".

I am pleased that this issue is coming to closure, and the truth will be known once and for all. This controversy over the construction of the water and sewer lines on Big Island has been going on now for almost five years. It all began November 19, 1998 when the DNR issued its first "directive" to the developers, Folsom Ridge LLC, that "construction of the water and sewer must be stopped immediately, until such time a construction permit is issued." Unfortunately, by the time that letter was sent to Jim Jackson, project engineer for the developers, nearly one mile (4,600 feet) of water and sewer lines had already been constructed in the same trench.

In fact, a follow-up letter from Jim Jackson to the DNR just three days later on November 22, 1998 admitted that "part of the lines have been installed in the same trench although the construction permit for the water system has not been approved." In the same letter, the project engineer further admitted "The developers are sorry for the trouble caused by their starting construction without a permit and for having to place the lines in the same trench."

I understand that DNR regulation B.1-3 describes the requirement for Horizontal Separation of Water and Sewer Mains. I also understand that the regulation allows for a "variance" to this lateral separation of ten feet (10') "provided the water main is laid in a separate trench, or on an undisturbed earth shelf located on one side of the sewer at such an elevation that the bottom of the water main is at least eighteen (18") inches above the top of the sewer."

The real issue that will be decided on October 30<sup>th</sup> is if the "variance" was ever followed during the construction process. Even if the DNR allowed the construction of sewer and water lines in the same trench to continue and did issue an operating permit on February 23, 2000, the unanswered question is this: Was the water line (as stated by Dave Lees, project manager and partner for Folsom Ridge LLC) "in fact...laid on a separate shelf and that the shelf was comprised of compacted material." Hopefully for everyone's safety, we will find that these lines were installed correctly in compliance with DNR community drinking water construction standards.



However, if the test hole diggings prove otherwise, a serious case of fraud has been committed against the homeowners of Big Island, citizens of the state of Missouri and representatives of the Department of Natural Resources. There would be undeniable proof the "variance" granted by DNR was totally ignored by the developers and project engineer during the construction process.

I'm sure that we would all agree that having sewer and water lines in the same trench without proper safeguards (an elevated offset undisturbed earth shelf) poses a potentially very serious and dangerous public health hazard to the homeowners of Big Island and their drinking water supply. I personally have been reluctant to pay a tap fee and hook on to this system because of that very reason.

In addition, I also have a concern for my own personal financial liability if I become a member of an HOA that could be found operating an improperly constructed system. A system that could potentially contaminate the public drinking water supply and affect people's health and safety. Any responsible citizen would have the same concerns. I want assurance the system meets DNR operating standards and in fact, was constructed correctly as represented to the Big Island homeowners and DNR by the developers and project engineer.

As part of DNR's "Final Inspection and Approval of Public Water Supply Big Island Subdivision" as submitted February 23, 2000 by Stephen P. Jones, environmental engineer, it was stated that "if at any time in the future, it is found that the water system was not constructed in accordance with community drinking water construction standards, the department reserves the right to require any and all necessary alterations of the system to bring it back into compliance with appropriate standards." Well, that "time in the future" has arrived. Did the developers and project engineer follow the "variance" granted by the DNR? If not, then "all necessary alterations of the system to bring it back into compliance with appropriate standards" must be made.

Thank you for taking the time to listen to my opinions as well as those of other concerned homeowners on this important issue. Your understanding and DNR's commitment to find the truth and help resolve this controversy once and for all is appreciated. The facts will speak for themselves once and for all when the test holes are dug on October 30<sup>th</sup>.

If it is determined that the lines were not installed properly, the homeowners will expect corrective actions to be made promptly to protect not only our environment but also our public drinking water supply. Really, that's what this is all about...safeguarding the public's health and safety.

Sewer and water do not mix. Let's please make sure this system is installed correctly so it will be in compliance with DNR codes and regulations. Anything less is not acceptable or safe.

Respectfully submitted as a "Concerned Homeowner of Big Island" that wants to see the rules and regulations established by the Department of Natural Resources not only followed but also fairly enforced. Otherwise, there is no need to have regulations.

Ben F. Weir Jr.

cc Dr. Wayne Cooper, State Representative  
Clinton Finn, DNR  
Mike Tharpe, DNR  
Ben Pugh  
Jim Schrader  
Duane Stoyer  
Concerned Homeowners of Big Island



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November 18, 2003

Elena Seon  
Environmental Specialist  
Missouri Department of Natural Resources  
Water Pollution Control Program  
P.O. Box 176  
Jefferson City, MO 65102-0176



Ms Seon,

Due to previous business commitments, I was unable to be present last Thursday when you and Clinton Finn inspected the Big Island wastewater system and made your decisions on what test holes to dig. However, Mr. Ben Pugh, a Big Island neighbor of mine as well as several other "concerned homeowners", explained to me that only two test holes will be dug instead of the four previously agreed upon in our meeting on July 31st.

During your inspection tour, these homeowners pointed out at least four locations where sewer and water lines had been installed under the road in the same trench, and you and Clinton were shown sewer and water hookups located just inches apart in the same upright tubes. It was also pointed out to you how much land Folsom Ridge LLC owns on the second tier of Big Island, and how easy it would have been to dig a second trench at least 10 feet apart (as required by DNR regulations) to allow for the proper separation of sewer and water lines without the need for the DNR to issue any kind of a variance.

In fact, if there EVER was a variance issued by the DNR, which has never been proven beyond a reasonable doubt, the variance should have been issued ONLY on a "case-by-case" basis and not for the entire Island. The "concerned homeowners" have repeatedly requested a written copy of this variance, but for five years now still have been unable to obtain one from the DNR. In my opinion, this lack of response to their requests is inexcusable. Was one NEVER granted? Does one even exist or was a "verbal" variance granted instead?

Also during your inspection tour, it was brought to my attention that Clinton Finn walked off the distance between the wastewater filter bed and the public drinking water supply at the well houses, and came up with ONLY 160 feet of separation as opposed to the "minimum" of 300 feet as represented to the homeowners and shown as such on the Site Plan drawing submitted to the DNR by Lake Professional Engineering Inc. Was this just an "oversight" or another example of misrepresentation of the "as built" drawings to both the DNR and the homeowners? I would also note that the same drawing has a schematic of how the sewer and water lines were to be installed in the same trench with the water line clearly depicted as being on an elevated offset compacted earthen shelf. I would certainly hope for everyone's health and safety that the lines were actually installed this way and not like the drawing of the filter bed, which is off by almost half (140') the length of a football field.

In my opinion, Folsom Ridge LLC should not have influenced you and Clinton as to whether distribution lines were installed correctly or incorrectly based solely on whether they had been "paid for" or "not paid for"...or whether they were just "service" lines as opposed to active "distribution" lines. None of this makes any difference if ANY of the lines...whatever you want to call them..."fail" (crack, break, snap etc.) and contaminate the soil around them and in the process also potentially contaminate the potable drinking water supply. This does just as much damage to the public's health and safety whether the lines were "paid for" or not. And



remember that ALL of these lines are ultimately interconnected to the mains so it really doesn't matter where the contamination comes from. Paid for or not, this still is a public health and safety concern.

In my opinion, an obvious place to dig a "TEST" hole is where there is reasonable suspicion or doubt as to whether the sewer and water lines were installed in the same trench correctly or incorrectly as per DNR regulations. But for some reason, even after you and Clinton were shown two cases of this type of questionable installation, you were influenced not to dig up this evidence and confirm beyond a reasonable doubt that they were either installed correctly or incorrectly. This is exactly the kind of visual evidence the "concerned homeowners" have been pointing out to the DNR and other public health officials for the past five years, and yet after all this time we continue to ignore the very obvious and visible "red flags" pointing to potential health hazards associated with having sewer and water lines incorrectly installed in the same trench.

In my opinion, this was just another diversionary tactic by the developers to try to escape their responsibility for proving they correctly installed the lines. It makes no difference whether a "cluster" of sewer and water lines were paid for or not. What makes a difference to the current (and future) homeowners of Big Island is whether those lines were installed correctly or not. The entire wastewater system could be FREE or PAID FOR and still be incorrectly installed. The concern is the construction/installation method and not the billing process.

However, the real issue gets down to why the developers are afraid of the truth? Let's don't forget that Dave Lees, project manager and partner for Folsom Ridge LLC, told the DNR that the water line was "in fact...laid on a separate shelf and that the shelf was comprised of compacted material." Also let's also don't forget that Reggie Golden, developer, stated in a letter he sent to the homeowners of Big Island dated Nov. 29, 2000 that Folsom Ridge LLC had dug several test holes and verified the water and sewer pipes to be installed properly. Why the reluctance now to dig whatever holes are necessary...four, six or more...to prove beyond a reasonable doubt their previous statements are indeed factual? I would think that Reggie Golden would have shown these "test" holes many years ago before now to the "concerned homeowners" when their concerns were first raised to refute all the alleged accusations and avoid the current litigation he faces with the DNR?

I will be there in person to witness the digging of the two test holes on Big Island the week of Dec. 8<sup>th</sup> through Dec. 12<sup>th</sup>. At that time I will expect to be allowed to view the installation of the sewer and water lines in the same trench and to also verify that the water line was indeed constructed on a separate offset earthen shelf as represented by Folsom Ridge LLC and as allowed by the variance allegedly issued to them by the DNR.

Prior to that time, would you please send me a copy of the written variance issued to Folsom Ridge LLC allowing them to install sewer and water lines in the same trench on Big Island as per DNR regulation B.1-3 which requires "the water main is laid in a separate trench, or on an undisturbed earth shelf located on one side of the sewer at such an elevation that the bottom of the water main is at least eighteen (18") inches above the top of the sewer." I assume this variance would have been written and granted in late 1998 or early 1999.

I would expect to receive a copy of the written variance from you no later than Friday, November 28 or an explanation why you cannot provide the documentation. I look forward to seeing you and Clinton Finn the week of Dec. 8-12 on Big Island as we work together with the other "concerned homeowners" in the interest of the public's health and safety to bring closure to this matter.

Thank you for your continued cooperation and prompt response to my request.

Ben F. Weir Jr.  
Concerned Homeowner of Big Island

Cc: Dr. Wayne Cooper, State Representative  
Clinton Finn, DNR; Mike Tharpe, DNR  
Concerned Homeowners of Big Island



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December 22, 2003

Elena Seon  
Environmental Specialist  
Missouri Department of Natural Resources  
Water Pollution Control Program  
P.O. Box 176  
Jefferson City, MO 65102-0176

#3

Ms Seon,

It's now been more than a month (Nov. 18, 2003) since I requested you send me a copy of the written variance, allegedly issued to Folsom Ridge LLC in November 1998 allowing them to install sewer and water lines in the same trench on Big Island, Camden County, MO.

Since you did not reply or even have the courtesy of acknowledging receipt of my letter, I can only assume your silence means the DNR in fact does NOT have a written variance in the files and thus, a written variance was never issued to Folsom Ridge LLC authorizing them to put sewer and water lines in the same trench.

Therefore I and other homeowners on Big Island, can only assume that the DNR granted an operating permit for a wastewater and public drinking water supply system to the Big Island Homeowners Association (HOA) which apparently does not even meet the proper safety and health standards as required by your OWN department's regulation B.1-3 which requires "the water main is laid in a separate trench, or on an undisturbed earth shelf located on one side of the sewer at such an elevation that the bottom of the water main is at least eighteen (18") inches above the top of the sewer."

I am appalled BUT not totally surprised (since you have repeatedly ignored my two previous letters) that a state government agency, funded by taxpayer money to protect the environment and safeguard the public's drinking water supply, has spent so much time over the past five (5) years trying to figure out ways to deny any responsibility, accountability or liability for allowing this wastewater system to apparently be constructed in violation of DNR's regulations (see B 1-3 above).

In my opinion, your lack of concern for the public's health and safety is inexcusable and irresponsible. Making matters worse, these issues have repeatedly been brought to your department's attention since 1998. During those five (5) long years, there have been at least five (5) instances of improper behavior on the part of the Colorado developer including at least three DNR directives, violations or citations; a Camden County reprimand and a case of physical assault to one of the homeowners. These have all been documented and reported. The State Attorney General's office has even been involved in these issues.

At a meeting I attended with the "Concerned Homeowners" and State Rep. Dr. Wayne Cooper on July 31, 2003, you, Clinton Finn and Mike Tharpe agreed that there was sufficient evidence presented by the group to continue the investigation and have four test holes dug to verify if the lines were indeed installed correctly on an undisturbed earthen shelf as required by DNR Regulation B. 1-3. Five (5) months have



passed since that meeting, and the test hole digging has been postponed twice already and now allegedly will not happen until January 8, 2004. Of course, I have heard no logical reason from anyone justifying why in the world these postponements were allowed. Do you have one? Four of us that very same day could have gotten shovels and dug the test hole. I don't think the results will change much with five (5) months of delays. What is everyone afraid of finding when those holes are dug? The truth? What's so wrong with finding out the truth? Is it a money concern or more importantly, a worry about who will have to assume responsibility if something is found to be amiss?

After five (5) long years of "pass the buck" bureaucracy, these most recent delays are inexcusable and disturbing. Who's running the show? Who's in charge of this investigation? You and other representatives of the DNR agreed to investigate the allegations based on credible evidence presented to you so why do you NOW seem to be representing the "best interests" of a Colorado developer rather than the "best interests" of the citizens and taxpayers of the state of Missouri? I can not believe that the DNR does not have any authority to enforce its own regulations. The stakes are high. The public's health and safety should be the number one priority here and not how much it might cost a developer to "fix it right" the way it should have been done in the first place. Anything else is not acceptable.

So where do we go from here? Since no one (including yourself) wants to make a decision, maybe I can help. Let's dig the holes on January 8, 2004 come rain, snow, sleet, tornadoes, hurricanes whatever and settle this issue once and for all. You are wasting valuable taxpayer money and time. Let's find out the truth so a decision can be made. If in fact, the lines are installed correctly on an undisturbed earthen shelf as required by DNR regulation B. 1-3, then that's good news for everyone.

Especially for the DNR because I don't think you would want to be caught in violation of your own regulations. And also for Folsom Ridge because I don't think they would want to be caught in violation of DNR regulations especially since they have represented numerous times in writing and verbally to the homeowners that their own test hole diggings proved they are in compliance with DNR regulations. In fact, at the Dec. 12, 2003 annual meeting of the HOA, they reported that the DNR allowed them to put the sewer and water lines in the same trench. However, the "how" they were installed in the same trench is the key issue here and not that they were just "allowed".

I would be relieved, especially for the Big Island homeowners' health and safety, if we find them installed on an offset undisturbed earthen shelf as per DNR regulations. However, if that's not the case, then in my opinion, Folsom Ridge LLC must re-install the lines, at their cost, in a safe manner approved by the DNR in compliance with the department's regulations. The same "safe" manner that should have been used five (5) long years ago. Sewer and water lines in the same trench are NOT safe if NOT properly installed. Agreed?

Your cooperation would be appreciated, and I will expect a reply to the above issues and questions no later than January 2, 2004. Otherwise, I will be obligated to take this case to the court of public opinion.

Ben F. Weir Jr.  
Concerned Homeowner of Big Island

Cc: Dr. Wayne Cooper, State Representative  
Stephen Mahfood, Director, DNR  
Jim Hull, Director, DNR Water Pollution Control Program  
Clinton Finn, DNR Environmental Engineer  
Mike Tharpe, DNR Environmental Specialist  
Ben Pugh  
Duane Stoyer  
Concerned Homeowners of Big Island



# The Examiner

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February 4, 2004

Mr. Stanford A. Zeldin  
Attorney At Law  
DeWitt and Zeldin LLC  
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Town Pavilion, 1111 Main St.  
Kansas City, MO 64106

Stan,

Since you now are a board member of the Big Island HOA, I'm sure Reggie Golden has already sent you this information for your review. As you will see from these documents and pictures, the Concerned Homeowners Group of Big Island was vindicated in their long five (5) year campaign to prove their allegations that Folsom Ridge LLC was responsible for **incorrectly** installing the Phase One wastewater system. The Construction Investigation by the Missouri Department of Natural Resources (DNR) on January 12, 2004 confirmed that indeed **"the lines were not constructed in accordance with the approved plans or the department's regulations."**

In my opinion, we are now at a critical stage for the future of Big Island, its homeowners and what could happen to their property values. A great deal is at stake as we wait to hear about the **steps to compliance from DNR's Water Protection Program Enforcement Section. How Folsom Ridge LLC responds to the DNR's directives will determine whether we continue to have the same old atmosphere of distrust and antagonism between the neighbors and the developer or whether with the proper leadership and responsible action by ALL parties, we will be able to come together in a new spirit of cooperation that currently does not exist.** And yes, maybe I'm nostalgic and prejudice, but that is the way it used to be when I grew up on Big Island as a young man back in the 1960s.

It's time for the members of the HOA of Big Island to take charge of their own destiny and demand that they **MUST** be allowed by Folsom Ridge LLC to become **part of the solution** to the problem of fixing the faulty wastewater system that currently is not only a public health hazard but also the fuel line for the poisonous attitudes infecting our neighborhoods. To that end, Folsom Ridge LLC **MUST** commit itself to represent the "best interests" of ALL the homeowners and must go "above and beyond" any normal compliance steps that the DNR may impose on them regarding the "re-installation" of the system. In other words, Folsom Ridge LLC must fix the system **BETTER** than even the DNR might require and better than even the Concerned Homeowners would ever expect.

Here are three positive guidelines Folsom Ridge LLC **MUST** follow to restore confidence and trust among the homeowners on Big Island. These are not unreasonable and can be accomplished if the developer truly wants to begin the healing process that will improve not only community relations and property values on the Island but also ensure that we will have a first class AND safe system we can be proud of for many years to come.



1. Whenever possible, all water mains will be re-installed a **MINIMUM** of 10-foot separation from the sewer mains. Exceptions to this requirement may be considered on a strict "case-by-case" basis **AND** must have the prior approval of the DNR as well as approval by a majority of the current homeowners.

2. All existing distribution lines (crossing underneath the road to property owners) which have been determined to be installed in violation of National Plumbing Codes, will be re-installed with the water lines run in a separate trench with a minimum 10-foot distance from the sewer distribution lines. In no case, will both sewer and water lines be allowed to be contained within a single trench under the road. (These currently are our most dangerous health hazards.)

3. Folsom Ridge LLC will "re-warrant" the entire Big Island HOA wastewater and public drinking water system for an additional five (5) years after the DNR approves the re-installation of the system and issues a new operating permit for the rebuilt system. Once that new operating permit is issued, "Folsom Ridge LLC will become financially liable for the safe operation of the system and, in the event a defect is discovered during the warranty period, for (a) the water and sewer lines installed by Folsom Ridge LLC and/or (b) the sand beds installed by Folsom serving the sewer system, Folsom Ridge LLC commits to repair defects at its sole cost."

Without these public health "safeguards", I do not believe any progress will ever be made in changing attitudes or improving the spirit of cooperation on Big Island. Let's get it done right this time. More than \$187,000 was paid the first time for a system that was misrepresented to the homeowners from the very beginning when construction was started without a permit, and sewer and water lines were installed incorrectly in the same trench creating a public health hazard that exists today. Quite honestly Stan, I am very surprised we have not seen a multitude of lawsuits being filed by individual homeowners against Folsom Ridge LLC involving breach of contract as well as negligence and fraud. Especially from those who feel they were lied to about the fees and also from those homeowners who were promised they would have "dedicated" distribution lines run to their properties.

The eventual owners and operators of the system, the members of the Big Island HOA, should not have to assume any unnecessary liabilities associated with the re-installation of this system. Too much is at stake including their property values. They must be allowed to be part of the decision-making and oversight/inspection process, and should insist that Folsom Ridge LLC follow the guidelines set above or help develop additional ones.

I appreciate this opportunity to give you my opinions on what needs to be done to make Big Island a **better** place to live and raise a family. As a responsible member of the board, representing the homeowners of Big Island, you can make a big difference in facilitating a new commitment from Folsom Ridge LLC to do whatever is necessary to re-build this system in the safest way possible. Nothing less should be accepted by the members.

Thank you for your valuable time, and I do appreciate your interest and willingness to serve the homeowners of Big Island in some of our most challenging times. Together we can make it a better place than before, and I will volunteer my services to achieve that goal.

Sincerely,

Ben F. Weir Jr.  
Concerned Homeowner of Big Island



# The Examiner

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February 14, 2004

Mr. Rick Rusaw  
P.O. Box 54  
2020 Terry St.  
Longmont, CO 80501

Mr. Rusaw,

As a Big Island homeowner, I am deeply concerned (as I'm sure you must be) by the findings of the Construction Investigation by the Missouri Department of Natural Resources (DNR) on January 12, 2004.

As you are aware, the DNR investigation confirmed allegations made by the Concerned Homeowners Group of Big Island over the past five (5) years that Folsom Ridge LLC indeed was responsible for **incorrectly** installing the Phase One wastewater system.

The investigation found that **"the lines were not constructed in accordance with the approved plans or the department's regulations."** My concern in writing you today is very real and very close to home. The first test hole investigated by the DNR that day was almost directly behind my property. How would you feel if you found out that a potential health hazard was found in your backyard? How would you feel if your property value (as well as your neighbors) could potentially be at risk? Yes, I am deeply concerned about not only what the DNR found on January 12 but also how Folsom Ridge LLC will respond to this investigation and handle the negotiations with the DNR on the proper procedures to re-install the system. The health and safety of our families will not be negotiated away.

Mr. Rusaw, according to the records I have access to, there were 39 Big Island homeowners, many of them good friends and neighbors of mine, who paid \$4,800 each (\$187,000) in 1998 to Folsom Ridge LLC which helped the developer fund the construction of the Phase One Community Water and Wastewater System. It is my understanding that having a state-approved sewer and water system was critical to meeting certain county and state requirements essential to getting the development approved before it could be marketed to the general public.

Basically, in my opinion, these homeowners provided the original "seed money" and "seal of approval" to help Folsom Ridge LLC get the Big Island development project started. A project that I might add was done with one goal in mind: to make Folsom Ridge LLC lots of money. Unfortunately, the "seed money" was not used responsibly as promised and the past five (5) years have resulted in nothing positive but numerous investigations, cover-ups, violations and gross disregard for state regulations by the developer.

At the time these homeowners made their payments, **Dave Lees, project manager and one of the original developer partners**, promised them that this would be a "state of the art" system that "we can all be proud of." Mr. Lees also told them there would be a golf course and other amenities provided to the homeowners because this also was going to be a "first class development". In fact, he even sent out a letter that "If they elect to pay their \$4,800.00, and a waste water stub is installed at their property, **they will not be charged a monthly fee until they hook up.**" It is my understanding that is not the



case today, and this initial misrepresentation by Folsom Ridge continues to be one of several issues causing a great deal of hard feelings among many of the homeowners.

Unfortunately, as the DNR Construction Investigation exposed, this "state of the art" system has turned out to be nothing other than a potential **serious public health hazard**...a liability which affects not only my property values but also the property values of the very same homeowners who invested their money to help improve the infrastructure of Big Island and not to destroy it. I can't imagine what impact this decision by the DNR could have on your development's progress and credibility in the eyes of the local real estate community, but I would imagine that you are as concerned as I am about Big Island's future.

However, all is not completely lost. On behalf of the Concerned Homeowners Group of Big Island, here are three minimum standards Folsom Ridge LLC must implement to restore confidence and trust among the homeowners on Big Island. These minimum standards are not unreasonable and must be accomplished if the developer truly wants to begin the healing process that will improve not only community relations and help safeguard property values on the Island but also ensure that we (and the developer) will have a first class AND safe system...a "state of the art" system once promised and paid for that unfortunately does not exist today. Minimum safety standards include:

1. **Whenever possible, all water mains MUST be re-installed a MINIMUM of 10-foot separation from the sewer mains. Exceptions to this requirement might be considered on a strict "case-by-case" basis AND must have the prior approval of the DNR as well as approval by a majority of the current homeowners.**

2. **All existing distribution lines (crossing underneath the road to property owners) which are determined to be installed in violation of National Plumbing Codes, will be re-installed with the water lines run in a separate trench with a minimum 10-foot distance from the sewer distribution lines. In no case, will sewer and water lines be allowed to be contained within a single trench under the road. (These currently are our most potential dangerous health hazards.)**

3. **Folsom Ridge LLC will "re-warrant" the Big Island HOA subdivision wastewater and public drinking water system for an additional five (5) years after the DNR approves the re-installation of the system and issues a new operating permit for the rebuilt system. Once that new operating permit is issued, "Folsom Ridge LLC will become financially liable for the safe operation of the system and, in the event a defect is discovered during the warranty period, for the water and/or sewer lines re-installed, Folsom Ridge LLC commits to repair defects at its sole cost."**

Without these minimum public health "safeguards", I do not believe any progress will ever be made in changing attitudes or improving the spirit of cooperation on Big Island. Let's get it done right this time. More than \$187,000 was paid the first time for a system that was misrepresented to the homeowners from the very beginning when (1) construction was started without a permit (4,600 feet in November 1998) and (2) sewer and water lines were installed incorrectly in the same trench (DNR Violation #1315 JC on May 25, 1999) creating a public health hazard that exists today. In fact, the first test hole dug by the DNR behind my house in its investigation is less than four blocks away from the site of a previous violation. Obviously, there was total disregard and no respect for DNR regulations. How many more potential public health hazards were constructed from that point onward before the final lines were laid?

Quite honestly Mr. Rusaw, I am very surprised we have not seen a multitude of lawsuits being filed by individual homeowners against Folsom Ridge LLC involving breach of contract as well as negligence and misrepresentation. Especially from those who feel they were misled about the fees, promised a "state of the art" system and got something much, much worse. Even worse, Mr. Rusaw, in my opinion as well as others on Big Island, two blatant cases of misrepresentation were committed not only against the state of



Missouri but also against the homeowners of Big Island by representatives of the developer during the last five (5) years.

The first was when Dave Lees, system project manager and partner of Folsom Ridge LLC, was credited by the DNR in a June 23, 2000 Memorandum as stating, "in fact the water line was laid on a separate shelf and that the shelf was comprised of compacted material." That's **CASE NO. 1**. The next instance was when R.V. (Reggie) Golden, manager, stated in a November 17, 2000 letter to the members of the Big Island HOA "We have also dug several holes and have verified proper installation of water and sewer lines." (Note: To refute this claim, would Mr. Golden allow us to dig up any of the "several holes" he might have dug verifying proper installation of water and sewer lines?) That's **CASE NO. 2**. As you are aware, Cynthia S. Davies, Chief, DNR Southwest Regional Office Water Section, wrote in a letter that the January 12, 2004 Construction Investigation of the Big Island Subdivision, Camden County, Missouri, indicated "that the lines were not constructed in accordance with the approved plans or the department's regulations." **CASE CLOSED.**

The Concerned Homeowners Group of Big Island eagerly awaits the opportunity to work with you and the other residents as we move forward to resolve these differences and ensure the sewer and water lines are re-installed correctly. Hopefully, this will eliminate **beyond any reasonable doubt** that we not only have the "state of the art" system originally promised and once paid for but also a safe and healthy one as well. Hopefully, there will be a renewed spirit of cooperation so this matter of grave importance to the future of Big Island Subdivision can be put behind us in a positive manner and Big Island can once again become a better place to live and raise a family. We must all become part of the solution to this potential serious health hazard existing on Big Island today. I'm sure you agree with me that it will be in the best interests (financially and liability wise) for all of us to reach consensus on how best to proceed.

Since I have been following and documenting this "story" over the past five (5) years, I strongly urge Folsom Ridge LLC to **fully disclose** to ALL homeowners on Big Island the results of the DNR investigation on January 12 as well as the proposed plans for the safe re-installation of the system which will eliminate any potential public health hazards that might exist for the residents. I can assure you that it will be in the very best interests of the developer to do so. Again I strongly urge full disclosure of these public facts to the homeowners and members of the HOA. You have a fiduciary, legal and social responsibility to do so in a professional manner. The sooner this is done the better.

And finally, Mr. Rusaw, I recommend the representatives of Folsom Ridge LLC make a public apology to the Concerned Homeowners Group of Big Island for the "due diligence" they exhibited over the past five (5) years in recognizing and documenting a potential health hazard that hopefully will be corrected before someone becomes seriously ill. In my opinion, they have earned the neighbor's respect and gratitude for their honesty in always telling the truth. Their persistence and determination and attention to details obviously convinced the DNR that sewer and water lines incorrectly installed in the same trench are a public health hazard. They have provided a valuable community service to all homeowners on Big Island and should be commended for their efforts.

Our property values (yours as well) and the health of our families are at risk with the current conditions existing today on Big Island with the Phase One Wastewater System. Myself and the rest of The Concerned Homeowners Group of Big Island would appreciate your prompt response to our suggestions on how best to proceed so all differences can be resolved to everyone's satisfaction. Please call or write at your earliest convenience so we can resolve these issues, reach consensus and move ahead in a positive and united effort to make life on Big Island better and safer than it is today.

Sincerely,

Ben F. Weir Jr.



## National Codes In Reference To Sewer and Water In The Same Trench

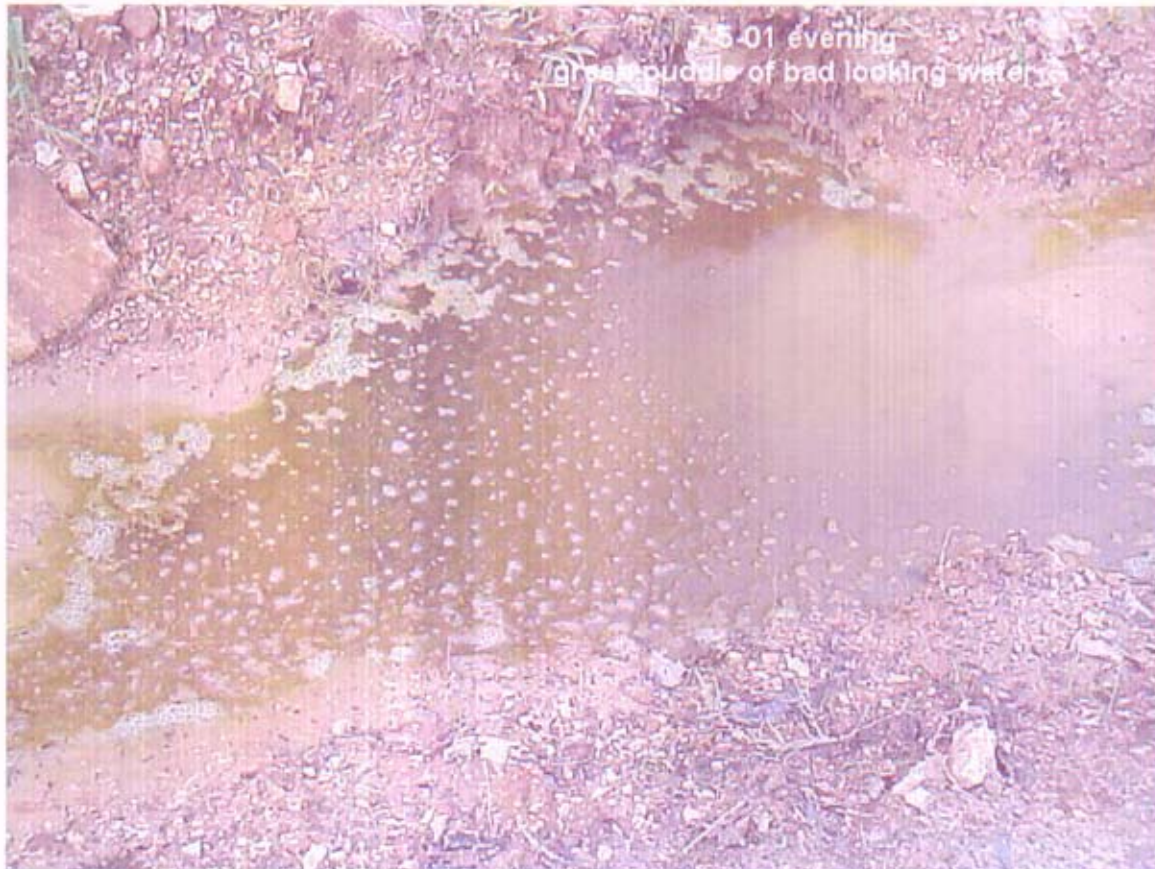
### **604.2 Separation of water service and building sewer/drain.**

Water service pipe and building sewer shall be separated by **10 feet of undisturbed or compacted earth.**

The requirement for separating the water service from the building sewer are intended to **reduce the possibility of contaminating the potable water supply,** assuming failure of the water supply and building sewer pipes.

Contamination can occur when there is a leak in the building sewer located near the water service pipe. The **soil then becomes contaminated** around the water pipe and if the water service pipe has a subsequent failure, **contamination of the potable water supply could occur.**

The code requirement is intended to protect against contamination of soil around the water service pipe. The simplest means of reducing the possibility of soil contamination is **installing the building sewer and water service pipes in two separate trenches separated horizontally by undisturbed or compacted earth.** Any contamination will tend to saturate the excavated soil before settling into the undisturbed compacted earth.





## **“Minimum” 300 Feet?**

The Big Island Wastewater System Site Plan drawing as submitted in November 1998 to the DNR by Lake Professional Engineering Inc. called for the wastewater treatment filter bed to be separated from the drinking water supply (wells) by a minimum of 300'. On November 13, 2003, Clinton Finn, environmental engineer, Missouri Department of Natural Resources, Southwest Regional Office, walked off the distance to be only 160 feet of separation. As you can see, anything can happen and did on July 19, 2001.



The code requirement is intended to protect against contamination of soil around the water service pipe.

**Contamination of the potable water supply could occur.**













# Just "Another" Honest Mistake?

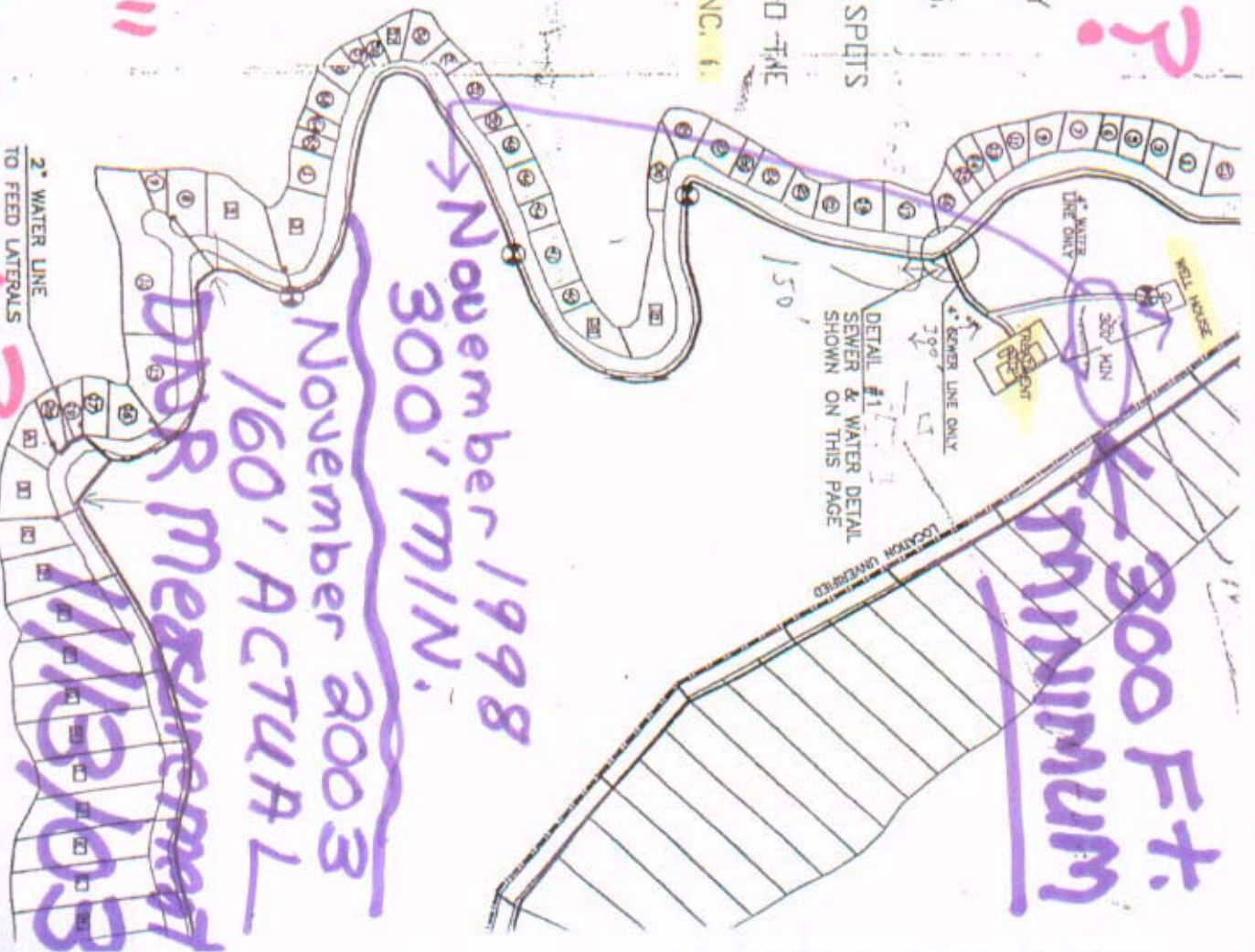
## NOTES:

1. LOCATION OF INSTALLED PIPE NOT ACCURATELY DEPICTED. TRACER WIRE HAS BEEN INSTALLED ON ALL PIPES FOR FIELD LOCATION.
2. WATER VALVES NOT TO EXCEED 1000' SPACING.
3. ALL LATERALS TO BE VERIFIED
4. INSTALL AN AIR RELIEF VALVE AT ALL HIGH SPOTS IN THE LINE

THIS DRAWING IS A SUPPLEMENTAL DRAWING TO THE PREVIOUS SUBMITTED DRAWINGS, 'BIG ISLAND' AS PREPARED BY LAKE PROFESSIONAL ENGINEERING, INC. 1 OF 6 PAGES

## LEGEND

	4" WATER VALVE
	4" SEWER LINE
	JOINT UTILITY TRENCH WATER, ELECTRIC, TELEPHONE
	JOINT UTILITY TRENCH SEWER, WATER, TELEPHONE
	1" LATERAL WITH SHUT OFF VALVE
	WATER CLEANOUT
	LOTS OWNED PRIOR TO THIS DEVELOPMENT
	LOT SOLD BY THE NEW DEVELOPERS
	LOTS FOR SALE
	LOTS TO BE SOLD BY METES & BOUNDS



Just "Another" Potential Health Hazard?



## National Codes In Reference To Sewer and Water In The Same Trench

### **604.2 Separation of water service and building sewer/drain.**

Contamination can occur when there is a leak in the building sewer located near the water service pipe. The soil then becomes contaminated around the water pipe and if the water service pipe has a subsequent failure, contamination of the potable water supply could occur.



The requirements for separating the water service from the building sewer pipes are intended to reduce the possibility of contaminating the potable water supply.



# EXHIBIT #6

STATE OF MISSOURI  
DEPARTMENT OF NATURAL RESOURCES

Bob Holden, Governor • Stephen M. Mahood, Director

www.dnr.state.mo.us

APR 8 2004

Mr. Ben F. Weir, Jr.  
The Examiner  
P.O. Box 459  
Independence, MO 64051

## Settlement Agreement (Note Paragraph 15)

RE: Big Island Subdivision, Camden County, MO-0123013

Dear Mr. Weir:

This is in response to your December 22, 2003 letter to Ms. Elena M. Seon of the Water Protection Program. We have not ignored your requests, but my staff has been researching your concerns and questions regarding the development occurring at Big Island.

On March 31, 2004, a Settlement Agreement (SA) was drafted and sent to Folsom Ridge. The SA requires Folsom Ridge to correct the violations observed during the digging of the test pits, on January 12, 2004, through a schedule of compliance and to pay a civil penalty. Folsom Ridge must submit an engineering report, plans and specifications detailing the relocation of the drinking water distribution system. These documents must be reviewed and approved by department staff prior to the initiation of any construction activity. Department staff will also conduct regular inspections of the site to ensure proper installment of the new drinking water distribution system.

The digging of the test pits has been delayed several times due to the lack of availability of the proper excavating equipment and due to prior obligations of both the developer, Folsom Ridge, and department staff. In order to accommodate everyone interested in attending the excavation we have allowed the dates to be changed.

The results of the test pits dug on January 12, 2004, have proved that the water and sewer lines have been improperly installed and the developer will be required to correct the situation in accordance with department regulations.



*Integrity and excellence in everything we do*



Mr. Ben F. Weir, Jr.  
Page 2

Regarding the variance, Chapter 8 of the Code of State Regulations 10 CSR 20-8.110 and 10 CSR 20-8.140 states "... *This rule reflects the minimum requirements of the Missouri Clean Water Commission as regards adequacy of design, submission of plans, approval of plans and approval of completed sewage works. Deviation from these minimum requirements will be allowed where sufficient documentation is presented to justify the deviation.*" Folsom Ridge's engineer requested a change in plans from the department on November 18, 1998, after Camden County officials refused to allow them to proceed as they had originally planned. The department replied on November 19, 1998, requesting they submit supporting documentation, drawings and revised specifications. These plans were received on December 30, 1998, and approved by a Department engineer. A construction permit was issued on January 5, 1999, giving approval to construct the sewer system. The department would not approve a system that was inadequate or did not follow our regulations (10 CSR 20-8.110 (3)) "... *No approval for construction can be issued until final, detailed plans and specifications have been submitted to the agency and found to be satisfactory.*"

In regard to the horizontal separation of sewer mains, this is the correct regulation, 10 CSR 20-8.120 (11)(C)1., which does allow for deviations on a case-by-case basis, if supported by data from the design engineer. "... *This deviation may allow installation of the sewer closer to a water main, provided that the water main is in a separate trench or on an undisturbed earth shelf located on one (1) side of the sewer at an elevation that the bottom of the water main is at least eighteen inches (18") (46 cm) above the top of the sewer.*"

In regard to the water treatment plant being located too close to the wastewater treatment plant, 10 CSR 20-8.020 (11)(A)3. states "... *Wastewater treatment facilities shall not be located within one hundred feet (100'), and preferably three hundred feet (300') of any well or water supply structure.*" While the three hundred feet (300') separation is preferred, it is not required.

The mission of the department is "to protect the environment, the public's health and the economic well being of Missouri's citizens by preserving and improving the quality of the State's air, land, and water, and by encouraging wise management of Missouri's natural resources." We agree there have been some violations associated with the construction of the water and wastewater collection system, and the department is pursuing enforcement action to resolve these violations.

If have any questions please feel free to contact Ms. Elena M. Seon of the Water Protection Program at P.O. Box 176, Jefferson City, MO 65102-0176 and (573) 751-1300.

Thank you.

Mr. Ben F. Weir, Jr.

Page 3

Sincerely,

DEPARTMENT OF NATURAL RESOURCES

A handwritten signature in dark ink, appearing to read "Mahtood", is written over the typed name.

Stephen Mahtood  
Director

SM:ems

c: Dr. Robert Wayne Cooper, Missouri House of Representatives  
Mr. Robert Cook, Attorney Generals Office  
Mr. Bruce Martin, Southwest Regional Office  
Mr. Clinton Finn, Southwest Regional Office  
Mr. John MacEachen, Public Drinking Water Program



## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made between the Missouri Department of Natural Resources, the "Department"; Jeremiah W. (Jay) Nixon, Attorney General of Missouri, the "AGO"; and Folsom Ridge, L.L.C., "Folsom". The parties, the Department, the AGO, and Folsom, enter into this agreement on the date this Settlement Agreement is signed by the Department.

WHEREAS, Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri;

WHEREAS, the Department is the state agency authorized to administer the provisions of the Missouri Clean Water Law, Chapter 644 of the Revised Statutes of Missouri (as amended) on behalf of the Clean Water Commission and the Missouri Safe Drinking Water Law, Chapter 640 of the Revised Statutes of Missouri on behalf of the Safe Drinking Water Commission;

WHEREAS, Folsom developed the Big Island Subdivision (Big Island) located in the NW 1/4, NW 1/4, SW 1/4, Sec. 6, T38N, R17W, in Roach, Camden County, Missouri;

WHEREAS, Folsom built a wastewater treatment facility (WWTF), septic tank with a recirculating sand filter and chlorination, including collection (sewer) lines, to serve the residents of Big Island. Sludge is disposed of by a contract hauler;

WHEREAS, the receiving stream for the WWTF is the Little Niangua Arm of the Lake of the Ozarks basin, Class L2, which is waters of the state as defined in Section 644.016(17), RSMo.



**WHEREAS,** The Big Island Home Owners Association (BIHOA) owns and operates the WWTF pursuant to Missouri State Operating Permit (MSOP) MO-0123013. The MSOP expires on February 24, 2005.

**WHEREAS,** The Big Island Home Owners Association (BIHOA) submitted an engineering report, plans and specifications for a new community public water supply well, storage facility and distribution system and received approval for this report on December 18, 1998 pursuant to Public Drinking Water Program Review Number 31182-98. The approval was valid for two years.

**WHEREAS,** Folsom constructed a community water system as defined in Missouri Safe Drinking Water Regulation 10 CSR 60-2.015(2)(C)9.

**WHEREAS,** On December 18, 1998 the Missouri Public Drinking Water Program requested The Big Island Home Owners Association (BIHOA) to provide detailed drawings of the trench to match the revised specifications submitted by (BIHOA) and show the earthen shell on which the water line was to be placed. The Missouri Public Drinking Water Program subsequently received the drawings, showing the earthen shell.

**WHEREAS,** On February 23, 2000 final approval of the construction done under permit review number 31182-98 was sent to BIHOA which stated that this final approval does not include the distribution lines as the Department was unable to observe the placement of these lines to verify adequate separation of the water and sewer lines in accordance with community drinking water construction standards. This final approval also included the caveats that the Department reserves the right to require any and all necessary alterations of the system to bring it back into compliance with appropriate standards and to withdraw approval of the water supply facilities any time they are found to be unsatisfactory.

WHEREAS, The Big Island Home Owners Association (BIHOA) owns and operates the Drinking Water Treatment Plant pursuant to Public Water Supply permit (PWS) MO-3051265.

WHEREAS, on January 12, 2004, department staff inspected Big Island and observed the following violations: the water and wastewater collection and distribution lines were placed in the same trench without proper separation between the lines; the water distribution lines were not placed on an undisturbed earthen shelf as was stated in the as-built drawings; and the water and sewer lines were not constructed in accordance with the approved plans.

WHEREAS, failure to construct according to plans is a violation of Missouri Clean Water Law, Section 644.076.1, RSMo, and 10 CSR 20-8.120 (11)(C)1 and Missouri Safe Drinking Water Law, Section 640.115.2, RSMo, and 10 CSR 3.010(1).

WHEREAS, the Missouri Clean Water Law, Section 644.076.1, RSMo, makes it unlawful to violate the Missouri Clean Water Law and regulations promulgated pursuant thereto and establishes civil penalties of up to and including ten thousand dollars and no cents (\$10,000.00) per day for each day, or part thereof for each violation.

WHEREAS, the Missouri Safe Drinking Water Law, Section 640.130.4, RSMo, makes it unlawful to violate the Missouri Safe Drinking Water Law and regulations promulgated pursuant thereto and establishes civil penalties of up to and including fifty dollars and no cents (\$50.00) per day, or part thereof for the first violation of sections 640.106 to 640.140 and one hundred dollars and no cents (\$100.00) per day or part thereof for the second violation and for each violation thereafter.



WHEREAS, the Department, the AGO, and Folsom desire to resolve all disputes or claims which could be made against Folsom for the above-alleged violations of the Missouri Clean Water Law and Missouri Safe Drinking Water Law.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Department, the AGO, and Folsom further stipulate and agree as follows:

1. The provisions of this Settlement Agreement shall apply to and be binding upon the Department, the AGO, and Folsom, as well as their successors in interest, and their successors in office. Further, each party executing this Settlement Agreement shall be responsible for ensuring that their agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, adhere to the terms of this Settlement Agreement.

2. Folsom agrees to pay a civil penalty in the amount of eight thousand dollars and zero cents (\$8,000.00) in the form of a certified check or cashier's check made payable to the "Camden County Treasurer as Trustee for the Camden County School Fund."

The check for the civil penalty sum is due and payable upon execution of this Settlement Agreement by Folsom. The check shall be mailed to:

Mr. Robert Cook  
Assistant Attorney General  
PO Box 899  
Jefferson City, MO 65102

Receipt of the executed Settlement Agreement and check are acknowledged by the Department and the AGO signatures affixed hereto.

3. Within sixty (60) days of the execution of this Settlement Agreement, Folsom shall submit to the department an engineering report, plans and specifications,

identifying the corrections required to be made to the water distribution system required or proposed to be made to correct issues necessitating this Settlement Agreement. That report must contain the signature and seal of an engineer registered in the State of Missouri to practice such work. That engineer shall respond to the department regarding requests for clarification of information, inclusion of additional information and the like and shall be transmitted to the department within thirty (30) days of request by the department for further information.

4. Within one hundred and eighty (180) days of the Department's approval of the engineering report, plans and specifications and issuance of a construction permit, Folsom shall complete modification of the water distribution system weather permitting.

5. Folsom shall submit to the department an engineer's certification of construction completion.

6. Under no condition shall any construction take place to modify, correct or replace any portion of the water distribution system until the construction permit, referenced in paragraph 5 above, has been issued by the department, and all such construction must be in strict compliance with the approved plans and specification reviewed and approved by the department.

7. Folsom shall notify the department's Southwest Regional Office (SWRO), and in particular the engineering section of that office, of the commencement of construction and shall make arrangements with that office for inspections to be made at intervals during the reconstruction. Folsom, or his general contractor, shall make such arrangements at least seventy-two (72) hours in advance of the anticipated need for such inspection and agrees to advise of any canceling or rescheduling needed at least forty-eight (48) hours before such inspection is scheduled to take place.



8. Folsom agrees that, in the event of any conflict in placement and/or alignment between water and wastewater piping during the course of the project, that he, or his contractor, shall communicate such conflict to the engineering section of the SWRO and shall resolve such conflict with approval from that office. Folsom, or his contractor, also agrees to properly record such resolutions on "as-built" plans to be submitted at the time the project is completed. Finally, Folsom agrees to refrain from covering such resolutions with fill material until inspected by SWRO engineering staff, if so directed by that office.

9. The terms of this agreement shall not be deemed to have been satisfied until the project has been subjected to a Final Construction Inspection and approved by staff from the SWRO and until Folsom's engineer has submitted a properly sealed certification of project completion, to include a statement that the project was constructed in accordance with previously approved plans and specifications.

10. Should Folsom fail to meet the terms of this Settlement Agreement, including the deadlines set out in paragraphs 3 - 9, Folsom agrees to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Any such stipulated penalty shall be paid within ten (10) days of demand by the AGO as described in paragraph 2 above. This stipulated penalty is not a civil penalty, nor an administrative penalty. Rather it is a sanction for not complying with the terms of this agreement.

11. Nothing in this Settlement Agreement shall be construed as excusing or

forgiving future noncompliance with the Missouri Clean Water Law, Chapter 644, RSMo, and its implementing regulations or the Missouri Safe Drinking Water Law, Chapter 640, RSMo, and its implementing regulations. In the event that Folsom fails to pay the civil penalty or comply with any other terms as specified herein, a breach of this Settlement Agreement shall be deemed to have occurred and litigation to require compliance or any other remedies will be pursued, including but not limited to, filing suit for the violations of the Missouri Clean Water Law and/or the Missouri Safe Drinking Water Law as alleged in this Settlement Agreement.

12. Execution of this Settlement Agreement shall be complete when the Department has signed and dated the Settlement Agreement. As the last party signing the Settlement Agreement, the Department shall promptly distribute copies of the executed Settlement Agreement to the other signatories.

13. Upon receipt of full payment of the above-mentioned penalty and full compliance with this Settlement Agreement, the Department and the AGO agree to refrain from initiating or asserting against Folsom any civil or administrative suit claiming violations of the Missouri Clean Water Law, Chapter 644, RSMo, and Missouri Safe Drinking Water Law, RSMo 640, as alleged in this Settlement Agreement.

14. Each signatory to this Settlement Agreement avers that he or she has the authority to bind his or her respective party to this Settlement Agreement as evidenced by their signature on this Settlement Agreement.

15. In consideration for the release contained herein, Folsom agrees to comply with all applicable Missouri water pollution statutes and regulations in the future.

→ Refer To EXHIBIT # 7  
Dated 6/28/05  
REPEAT VIOLATION!



In Witness Whereof, the parties have executed this Agreement as follows:

FOLSOM RIDGE DEVELOPMENT LLC

By: [Signature]  
Mr. Reggie Golden

Date: 4/10/04

By: [Signature]  
Mr. Rick Rusaw

Date: 4/10/04

JEREMIAH W. (JAY) NIXON  
ATTORNEY GENERAL OF MISSOURI

By: [Signature]  
Robert C. Cook, Assistant Attorney General

Date: 4/20/04

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: [Signature]  
Jim Hull, Director  
Water Protection Program

Date: 4-26-04

SOUTHWEST REGIONAL OFFICE  
MISSOURI DEPARTMENT OF NATURAL RESOURCES  
PUBLIC DRINKING WATER UNIT

6-9-05

Check One: Report of Construction Inspection ☒

or: Site Survey ☐

Public Water Supply Name: Big Island Subd. County Camden

Public Water Supply I.D. Number: 3031265 Review Number: 53303-04

Legal Owner(s) of Development: Mr. Reggie Golden (303) 702-0708  
Name(s) Address(es) Telephone Number(s)

Folsom Ridge, L.L.C.

P.O. Box 54

Longmont, CO 80501

**EXHIBIT #7**

Type: (check one) ☐ Individual ☐ Husband/Wife ☐ Partnership ☐ Unknown  
☐ Limited Partnership ☒ Corporation ☐ Municipality ☐ State ☐ Federal  
☐ Public Water District ☐ Homeowners Association ☐ Other \_\_\_\_\_  
Specify

Contractor(s): \_\_\_\_\_  
Name(s) Address(es) Telephone Number(s) Ownership Type (see above for type)

Were there violations of Public Drinking Water Regulations, Design Guide, or Approved Plan/Specifications?

☒ Yes

☐ No

If yes, Notice of Violation Number: 112105W Date Issued: 6-28-05

Issued to: Folsom Ridge, L.L.C.

P.O. Box 54

Longmont, CO 80501

Observations: Construction of the approved water lines appears to be  
constructed properly. However, the waterline extension past  
the causeway, on the main land was not approved and  
is construction without written approval and is a  
violation.

Date of Inspection: 6-9-05

Signature: Clinton J. Finn Approved by: \_\_\_\_\_

c: Public Drinking Water Branch





Matt Blunt, Governor • Doyle Childers, Director

## DEPARTMENT OF NATURAL RESOURCES

[www.dnr.mo.gov](http://www.dnr.mo.gov)

June 28, 2005

### NOTICE OF VIOLATION #11210SW

Mr. Reggie Golden  
Folsom Ridge, L.L.C.  
P.O. Box 54  
Longmont, CO 80501

Dear Mr. Golden:

On May 13, 2005, during a construction inspection, Mr. Clinton J. Finn, P.E., of the Missouri Department of Natural Resources Southwest Regional Office (the department), observed an area adjacent to Big Island Subdivision that was being cleared for development. It was observed that waterlines from the Big Island Subdivision Waterline Relocation of Phase I and New Phase III project (review number 53303-04) appear to have been extended to this area under development.

In an effort to determine if this extension of waterlines was included in the approval of the above mentioned project, a construction inspection was conducted by Mr. Breck Summerford, P.E. and Mr. John MacEachen, both of the department's Public Drinking Water Branch, Ms. Elena Seon, of the department's Water Pollution Branch, and Mr. Clinton J. Finn, P.E., of this office.

During this construction inspection, it was determined that waterlines have been extended to this area adjacent to Big Island Subdivision and that this extension was not included in the approval for the Waterline Relocation of Phase I and New Phase III project. Therefore, this extension constitutes construction, installation, or modification of a community public water supply without written authorization, and is a violation of the federal and state Safe Drinking Water Law and Regulations as listed below:

Folsom Ridge, L.L.C. failed to obtain written authorization from the department prior to construction, alteration, or extension of the drinking water system at Big Island Subdivision in Roach, Camden County, Missouri.

These violations are also formally listed in the enclosed Notice of Violation NOV 11210SW.

#### SCHEDULE OF COMPLIANCE

1. Cease construction immediately on waterlines that you do not have written approval for.




Mr. Reggie Golden  
Folsom Ridge, L.L.C.  
June 28, 2005  
Page 2

2. Within 30 calendar days, Folsom Ridge, L.L.C. shall submit to the Department of Natural Resources Southwest Regional Office, 2040 W. Woodland, Springfield, Missouri 65807, 417-891-4300, a written explanation of the failure to obtain written authorization (construction permit) from the department prior to improvements to the drinking water systems.
3. Within 30 calendar days, Folsom Ridge, L.L.C. shall submit to the Department of Natural Resources Public Drinking Water Branch, P.O. Box 176, Jefferson City, Missouri 65102, 573-751-5331, two copies of the engineering report, calculations, plans, and specifications prepared by a professional engineer registered in Missouri, for all public water supply improvements to be constructed along with a completed application for construction approval (enclosed). The engineering documents must include and clearly identify the portions of the system that have already been constructed. The proposed improvements as well as the portions constructed without a permit must comply with the department's *Design Guides for Community Water Systems*.

Please be aware that all future construction, alteration, or extension of the drinking water and wastewater system must be approved and authorized in writing before work can begin. Please contact Mr. Clinton J. Finn, P.E. of this office by calling 417-891-4300 or via mail at the Southwest Regional Office, 2040 W. Woodland, Springfield, Missouri 65807-5912 if you have any questions.

Sincerely,

SOUTHWEST REGIONAL OFFICE

  
Cynthia S. Davies, Chief  
Water Section

CSD/cfb

Enclosures

c: Krehbiel Engineering  
Public Drinking Water Branch  
Water Pollution Control Branch

CAMDEN/PDW  
BIG ISLAND SUBDIVISION  
MO-3031265  
029.pdwp.BigIslandSubdivison.mo3031265.WaterlineReplacement.2005.06.28.fy05.enrf.5330304.cjf.doc





MISSOURI DEPARTMENT OF NATURAL RESOURCES  
**NOTICE OF VIOLATION**

VIOLATION NUMBER

11210SW

DATE AND TIME ISSUED

June 28, 2005

SOURCE (NAME, ADDRESS, PERMIT NUMBER, LOCATION)

Big Island Subd.

Folsom Ridge, L.L.C., P.O. Box 54, Longmont, CO 80501, (303) 702-0708

MO-3031265

SE1/4, SW1/4, Sec. 31, T39N, R17W; SE1/4, SE1/4, Sec. 1, T38N, R18W; W1/2, Sec. 6, T38N, R17W Camden County

MAILING ADDRESS

Folsom Ridge, L.L.C., P.O. Box 54

CITY

Longmont

STATE

CO

ZIP CODE

80501

NAME OF OWNER OR MANAGER

Mr. Reggie Golden, Folsom Ridge, L.L.C.

TITLE OF OWNER OR MANAGER

Owner

LAW, REGULATION OR PERMIT VIOLATED

Missouri Safe Drinking Water Law Section 640.115.2 RSMo  
Missouri Safe Drinking Water Regulation 10 CSR 60-3.010(1)(A)

NATURE OF VIOLATION

DATE(S):

TIME(S):

Caused or permitted construction, installation or modification of community public water supply without written authorization.

SIGNATURE (PERSON RECEIVING NOTICE)

Sent Via US Mail

SIGNATURE (PERSON ISSUING NOTICE)

Mr. Clinton Finn

TITLE OR POSITION

TITLE OR POSITION

Environmental Engineer/SWRO

DISTRIBUTION:

SOURCE

CENTRAL OFFICE

REGIONAL OFFICE



Location: Area immediately southwest of Big Island Subd., Camden County

Photographer: Breck Summerford

Photograph Date: 6/9/05

Direction of View: Southwest

Comments: Area of new development with extension of waterline from Big Island water system.



Location: Area immediately southwest of Big Island Subd., Camden County

Photographer: Breck Summerford

Photograph Date: 6/9/05

Direction of View: Northeast

Comments: End of line of the waterline extension in the new development area.





Location: Area immediately southwest of Big Island Subd., Camden County

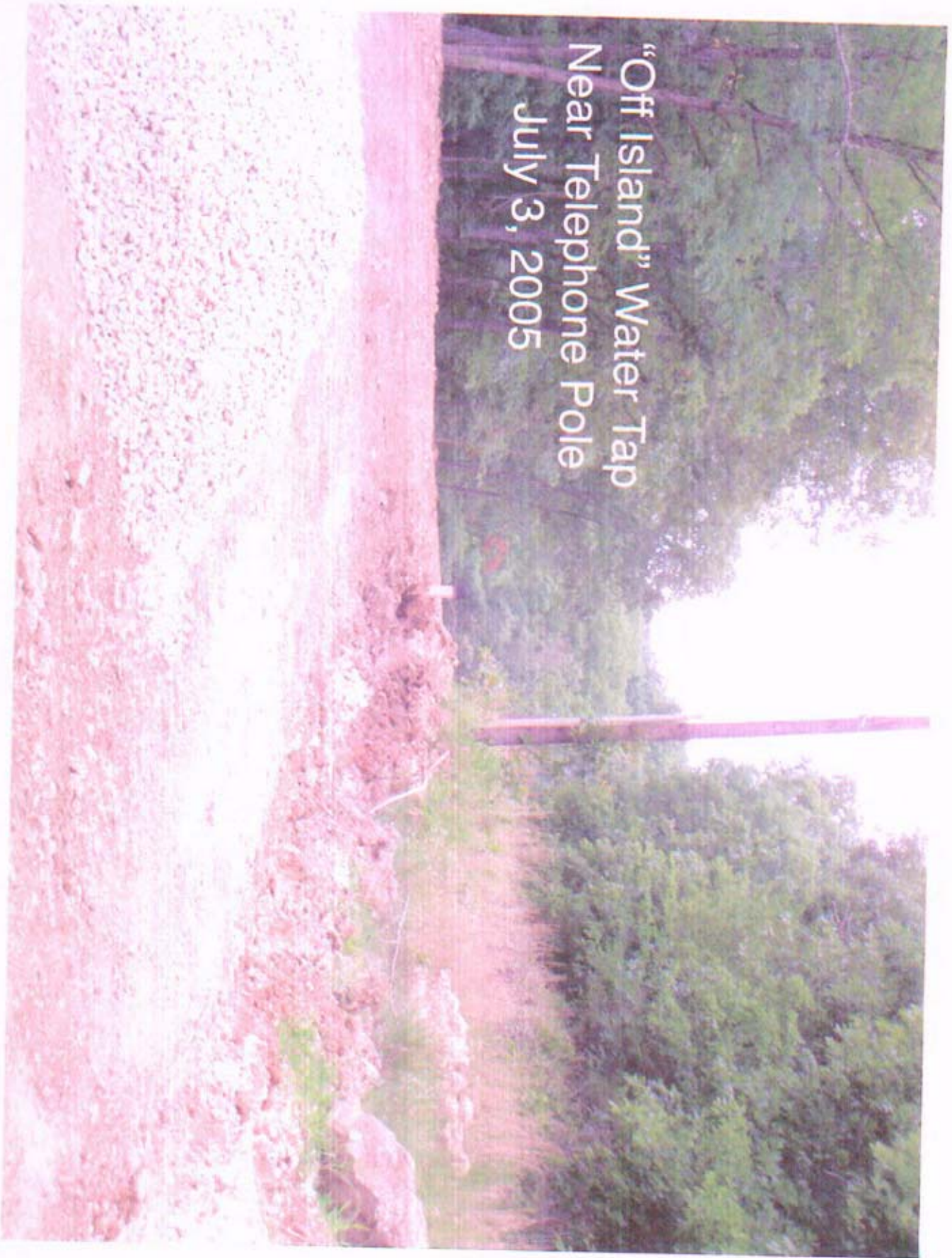
Photographer: Breck Summerford

Photograph Date: 6/9/05

Direction of View: Down

Comments: Open trench with tee, spigot, and pressure gauge on the waterline near the end of the line of the extension in the new development area.

"Off Island" Water Tap  
Near Telephone Pole  
July 3, 2005





July 3, 2005 -- "Off Island" Water Faucet





CF  
**Folsom Ridge, LLC**  
**P. O. Box 54**  
**Longmont, CO 80502**

July 7, 2005

RECEIVED  
JUL 14 2005  
SOUTHWEST REGION

Ms. Cynthia S. Davies  
Department of Natural Resources  
Southwest Regional Office  
2040 W. Woodland  
Springfield, MO 65807-5912

Ref: Notice of Violation #11210SW

Dear Ms. Davies,

This is in response to your letter of June 28, 2005.

We have ceased construction on the waterlines that we do not have written approval for. In addition, we have requested our contractor to completely physically disconnect the extension.

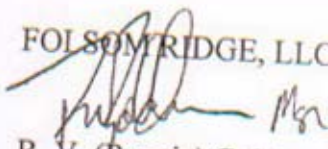
Our Engineer, Krehbiel Engineering, is working on an upgrade plan for the entire system, including both water storage expansion and distribution system expansion. We had hoped to submit both components at the same time, several weeks ago. Krehbiel Engineering was waiting on the water usage data from the peak summer days and months to be able to make some reliable projections. We did not understand this and thought the upgrades had been submitted.

We apologize for extending that section of waterline without approval.

We have requested that our engineer provide you with the information requested in your letter Item No. 3. In order to meet the 30 calendar day time frame, we will be submitting for construction approval on that extension of the system already constructed but disconnected from the system until such time we receive the appropriate permits.

Sincerely,

FOLSOM RIDGE, LLC

  
R. V. (Reggie) Golden  
Manager

cc: Clinton Finn



# EXHIBIT #8



Matt Blunt, Governor • Doyle Childers, Director

## DEPARTMENT OF NATURAL RESOURCES

[www.dnr.mo.gov](http://www.dnr.mo.gov)

June 28, 2005

Mr. Reggie Golden  
Folsom Ridge, LLC  
P.O. Box 54  
Longmont, CO 80502

Dear Mr. Golden:

Enclosed is the **Report of Inspection for the community water supply serving Big Island Subdivision in Camden County, Missouri.** This report is believed to be self-explanatory and I trust you will direct your attention to the recommendations contained therein.

Please feel free to contact Sheila Yoder of this office by calling 573-348-2442 or via mail at Southwest Regional Office, 2040 W. Woodland, Springfield, Missouri 65807-5912, if you have questions.

Sincerely,

SOUTHWEST REGIONAL OFFICE

A handwritten signature in cursive script, reading "Cynthia S. Davies", is written over the typed name.

Cynthia S. Davies, Chief  
Water Section

CSD/syg

Enclosure

c: Public Drinking Water Branch  
Lake Ozark Water and Sewer Services

CAMDEN/PDW  
BIG ISLAND SUBDIVISION  
MO3031265  
029.pdwp.BigIslandSubdivision.mo3031265.x.2005.06.28.fy05.ins.x.sky



# FILE

MISSOURI DEPARTMENT OF NATURAL RESOURCES  
REPORT OF INSPECTION  
COMMUNITY PUBLIC WATER SYSTEM  
BIG ISLAND SUBDIVISION  
CAMDEN COUNTY, MISSOURI  
PUBLIC WATER SYSTEM ID MO3031265

June 28, 2005

INTRODUCTION

A routine inspection was made of the community public water system serving Big Island Subdivision by Sheila Yoder of the Missouri Department of Natural Resources-Southwest Regional Office on June 2, 2005. The purpose of the inspection was to determine compliance with the Missouri Safe Drinking Water Law and Regulations. The following unsatisfactory features were noted with comments and recommendations for correction. These unsatisfactory features are organized into categories as noted below.

UNSATISFACTORY FEATURES

Category I - Violations of Missouri Safe Drinking Water Regulations

These violations can result in enforcement action if repeated or not corrected. Some violations are more serious than others, and this is explained in the comments.

1. The public water system failed to collect routine samples from the distribution system as required by the Safe Drinking Water Regulation 10 CSR 60-4.020(1).
2. The public water system dispensed water without obtaining a written permit to dispense water in violation of Safe Drinking Water Regulation 10 CSR 60-3.010.
3. The public water system failed to develop a written total coliform bacteria sample siting plan as required by Safe Drinking Water Regulation 10 CSR 60-4.020(1)(A).
4. The public water system failed to obtain written authorization from the department prior to construction, alteration, or extension of the water system in violation of Safe Drinking Water Regulation 10 CSR 60-3.010(1).

Category II - Construction Deficiencies from the January 1988 Missouri Department of Natural Resources Design Guide for Community Public Water Supplies Hereinafter Referred to as "Design Guide"



These deficiencies are important, and the public water system should give serious consideration to correction. However, these deficiencies are not normally subject to enforcement action unless the department determines that these are contributing to the failure of the public water system to provide an adequate volume of safe water to customers at sufficient pressure. If this determination is made, the department may declare that public water system inadequate or of defective design under Safe Drinking Water Regulation 10 CSR 60-4.080(5) and begin enforcement action for correction. If this determination was made during this inspection, the particular unsatisfactory feature is noted with "Violation of 10 CSR 60-4.080(5)."

5. The well casing was not protected against physical damage as required by the Design Guide, Part 3.2.7.3.a.7.
6. Each service connection is not individually metered as recommended by Design Guide, Part 8.10.

#### COMMENTS

Public water systems must collect total coliform samples according to a written sample siting plan at sites which are representative of water throughout the distribution system. Distribution sampling point should be chosen where both upstream and downstream repeat samples can be taken. The well can only be used for a repeat sample location, not for monthly routine samples.

All public water systems must obtain a permit to dispense water to the public. There is no permit fee. A new public water system must submit a permit to dispense application and an emergency operating plan, must have obtained a construction permit and constructed the facilities in accordance with this construction permit, and must meet MCL requirements. A grandfathered public water system must submit a permit to dispense application and an emergency operations plan, must submit evidence that the grandfathered well was drilled prior to October 1, 1979, and was used or intended for this system, must have chlorination facilities with 30 minutes effective contact time, must meet MCL requirements, and must submit duplicate certified plans.

The regulations require each system to have a written plan that outlines bacteriological sampling points. This plan should include the following:

- a) A map or sketch or written description indicating the geographic location (street address) of each routine sampling point and repeat sampling point.
- b) Five routine sampling points for small systems (under 4,901 population) and a separate sampling point for each sample collected on any day for large systems.



- c) Choose routine sampling points that have upstream and downstream repeat sampling points within five service connections. List these upstream and downstream repeat sampling points.
- d) Choose routine sampling points that are geographically scattered around the distribution system. Do not use the well or plant for routine sampling points.
- e) Choose sample taps in this order of preference:
  - cold water only inside taps
  - freeze-proof taps through the building foundation
  - hot/cold mixing faucets (kitchen sinks)
  - use mixing faucets only if no other taps are available

If you do use mixing faucets, take samples in the following manner: Remove screens, gaskets, and other faucet attachments. If the faucet appears dirty, spray down with a weak bleach solution (100 mg NaOCl/L). Flush the hot water for two minutes and then flush the cold water for three minutes (use a watch to time the two and three minutes). Fill the bottle to the 100 ml line near the top (if the water level is significantly below the line, the sample will be rejected Quantity Not Sufficient, and if it is significantly above the line, the sample will be rejected Bottle Too Full).

Do not use freeze-proof yard hydrants.

All community public water systems must obtain written authorization (a construction permit) from the department prior to construction, alteration, or extension of the water system. To obtain this authorization, two sets of an engineer's report, engineer's plans, and engineer's specifications prepared by and bearing the seal of a professional engineer registered in Missouri must be submitted to the Missouri Department of Natural Resources-Southwest Regional Office, 2040 West Woodland, Springfield, MO 65807, 417-891-4300 along with a construction permit application and a letter from the public water system authorizing the construction (unless the system is applying for the permit), and these documents must be approved by the department. Service lines are exempt from this requirement. A service line must serve only one connection. If a service line could reasonably be expected to serve additional connections in the future (i.e., crosses or is adjacent to property not owned by the business or residence being connected or extends across vacant land suitable for development), a main must be installed and a construction permit obtained. Repairs are generally exempt unless the system is going to be significantly changed. Replacement of mains is exempt unless the main diameter is going to be changed. However, the public water system must take all steps necessary to ensure that the replacement main is installed with proper pipe and connectors, bedding, thrust blocking, and at sufficient depth.



The well casing and discharge piping must be protected against deterioration, physical damage, and freezing. Paint protects the metal casing from corrosion. An insulated well house prevents freezing.

Individual meters reduce water usage compared to systems with a flat rate, unmetered charge. Customers have an economic incentive to reduce usage and fix leaks. Totalling individual customer meters and comparing with total well pumpage allows the loss due to leakage to be calculated.

#### RECOMMENDATIONS

##### Category I - Violations of Missouri Safe Drinking Water Law and Regulations

Note these recommendations are mandatory and failure to follow these recommendations may lead to enforcement action.

1. Discontinue using the well as a location for monthly routine samples and begin taking samples in the distribution system.
2. Complete and return to this office the enclosed application for a permit to dispense.
3. Submit a written coliform sample siting plan to the Southwest Regional Office within 30 calendar days of the date of this report and keep one copy in your permanent water records. A form for this is enclosed.
4. The issue of constructing without a permit is being evaluated and reviewed by the Drinking Water Engineering Unit in this office.

##### Category II - Design Guide Deficiencies


These recommendations are not mandatory unless noted.

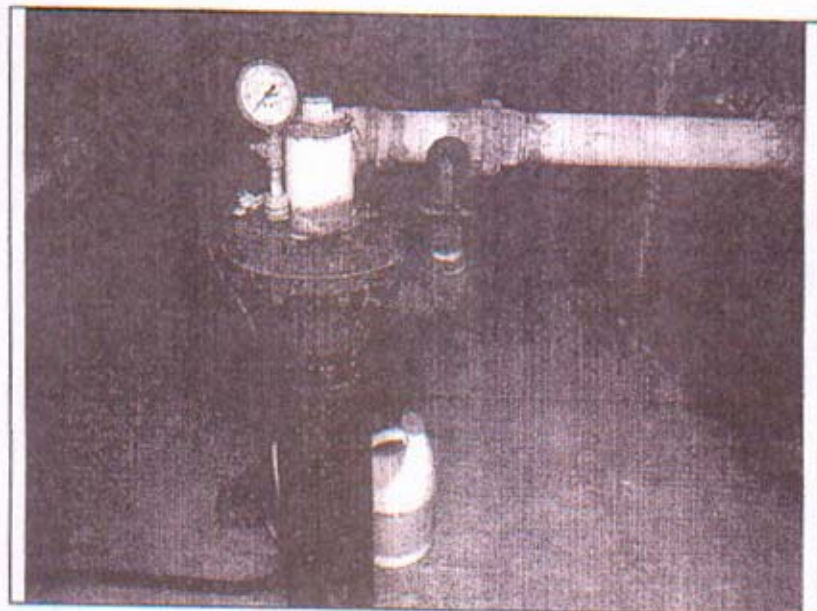
5. Paint the exterior of the well casing.
6. Install meters on each service connection.

SUBMITTED BY:

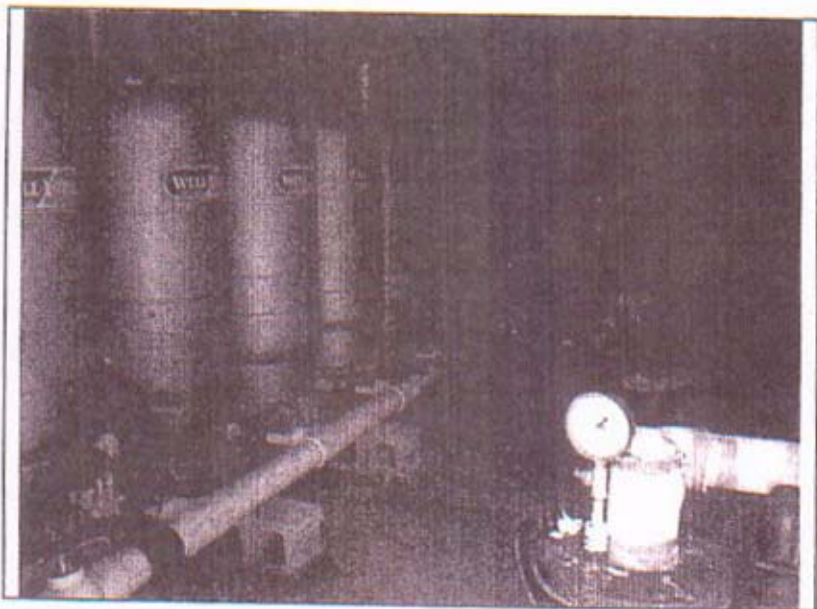
  
Sheila Yoder  
Environmental Specialist

APPROVED BY:

  
Charles W. Collins, Chief  
Public Drinking Water Unit



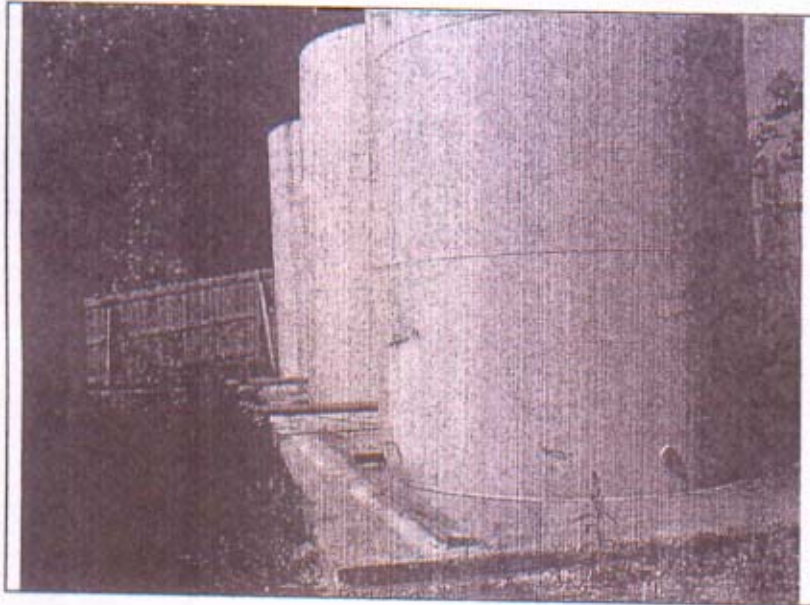
Location: Big Island Subdivision  
Photographer: S. Yoder  
Photograph Date: 06-02-05  
Comments: well



Location: Big Island Subdivision  
Photographer: S. Yoder  
Photograph Date: 06-02-05  
Comments: storage tanks



Report of Inspection  
Big Island Subdivision  
June 28, 2005  
Page 6



Location: Big Island Subdivision  
Photographer: S. Yoder  
Photograph Date: 06-02-05  
Comments: ground storage



MISSOURI DEPARTMENT OF NATURAL RESOURCES  
PUBLIC DRINKING WATER PROGRAM  
COMPLIANCE & OPERATIONAL INSPECTION

CLASS 2 INSPECTION FORM

INTERVIEW WED >	JIM McDUFFEY		DATE	06-02-05
ID NUMBER	MO3031265		SYSTEM NAME	Big Island Sub.
ADDRESS		CITY	STATE	ZIP CODE
Big Island Rd.		Boach	MO	65787
TELEPHONE NUMBER			803	702-0708

COMMENTS AND RECOMMENDATIONS FOR CORRECTION

The following comments are referenced to the applicable checklist items attached to this form.

101. Need permit to dispense  
227. Casing Rusty; painting recommended.  
234. Individual meters not recommended.  
Should Sample from distribution - need Sample plan on file

FREE & TOTAL CHLORINE RESIDUAL 0.5 & mg/l

☐ Sample Collected & LOCATION Big Island Rd

INSPECTOR'S SIGNATURE

Keith Yoder

TITLE

Environmental Specialist



**Commissioners**

**JEFF DAVIS**  
Chairman

**CONNIE MURRAY**

**STEVE GAW**

**ROBERT M. CLAYTON III**

**LINWARD "LIN" APPLING**



**WESS A. HENDERSON**  
Executive Director

**WARREN WOOD**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**COLLEEN M. DALE**  
Secretary

**DANA K. JOYCE**  
General Counsel

## ***Missouri Public Service Commission***

POST OFFICE BOX 360  
JEFFERSON CITY MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

### **Information Sheet Regarding Mediation of Commission Formal Complaint Cases**

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.



---

Colleen M. Dale  
Secretary of the Commission

Date: September 12, 2005



[illegible]

JEFFERSON CITY MO 65102

1000

[illegible]

~~Ben F. Wier  
Ben Weir  
2162 Big Island Dr.  
Roach, MO 65787~~

*[Faint handwritten notes and scribbles at the bottom of the page.]*