

Missouri Department of Natural Resources
St. Louis Regional Office/Water Pollution Control Branch
Report of Inspection
Lake Virginia Subdivision – East Lagoon
Springdale Court/Hematite/Jefferson County, MO
MO-0101672
March 23, 2017

Introduction

Pursuant to Section 644.026.1 of the Missouri Clean Water Law, I, Christopher Maher of the Missouri Department of Natural Resources (department) St. Louis Regional Office (SLRO) conducted a routine water pollution compliance inspection of the Lake Virginia Subdivision - East Lagoon located at Springdale Court, Hematite, Jefferson County, Missouri on March 8, 2017. This water pollution control inspection was conducted to determine the facility's compliance with the Missouri Clean Water Law, the Missouri Clean Water Commission Regulations, and the Missouri State Operating Permit (permit) MO-0101672. This report presents the findings and observations made during the compliance inspection, including file review, site visits, and communications with entity representatives.

Participants included:

ECO, Inc.

Jonathan Fribis

Operator

(636) 789-1326

jfribis@ecoincmo.com

Missouri Department of Natural Resources, St. Louis Regional Office

Christopher Maher

Environmental Specialist

(314) 416-2960

chris.maher@dnr.mo.gov

Entity Description and History

As part of the inspection, I reviewed the files for the Lake Virginia Subdivision – East Lagoon, including previous inspection reports, correspondence, and the permit conditions of Missouri State Operating Permit MO-0101672, to familiarize myself with the requirements specific to these facilities.

Missouri State Operating Permit MO-0101672 was last issued on February 22, 2008, and expired on February 21, 2013. This permit set forth effluent limitations, monitoring requirements, and permit conditions, both standard and specific, that the permittee was to follow. The facility owner has not submitted a permit renewal application to renew the permit, and is therefore considered to be operating without a permit (**Notice of Violation item #1**).

The east lagoon consists of a 2-cell lagoon with a design flow of 9600 gallons per day for the purpose of treating domestic wastewater from the Lake Virginia Subdivision. The facility has a chlorination system for disinfecting the wastewater effluent during the recreational season (April 1 to October 31). The facility is currently in receivership with Utility Management of Missouri, LLC. The receiving stream for this facility is a wet weather branch of Joachim Creek, which is located in the Cahokia-Joachim watershed (HUC 07140101). Site UTM coordinates for Outfall #001 are Easting 720437, Northing 4231745.

Joe Twellman with the St. Louis Regional Office conducted the previous, full compliance inspection of the facility on April 22, 2010. For the east lagoon, the St. Louis Regional Office issued a Letter of Warning dated May 5, 2010 for failure to maintain the slopes of the lagoon berms, deep-rooted vegetation on the berms, and solids and debris present in the chlorine contact chamber. Nicole N. Pfeffer with M.P.B., Inc. submitted a response letter dated June 14, 2010, stating that they were working with contractors to bid on repairing the lagoon berms, they were

evaluating the removal of the vegetation, and they had cleaned the chlorine contact chamber to remove debris. A follow-up inspection conducted by Mr. Twellman on August 10, 2010 found the facility to be in compliance, although it requested information on the ownership structure of M.P.B. Inc. and the operator responsible for the lagoon.

Mr. Twellman and Ms. Darcy Chase with the SLRO also conducted a field investigation of the facility on October 3, 2012. The east lagoon was found to be in noncompliance for failure to submit Discharge Monitoring Reports, failure to submit annual permit fees, failure to comply with the permit Schedule of Compliance, failure to maintain two feet of freeboard in the lagoon, failure to maintain lagoon berms, deep-rooted vegetation present, stormwater diversion not adequate, and apparent leakage of secondary cell resulting in failure to convey effluent through a defined outfall.

I reviewed the Discharge Monitoring Reports for the previous two-year period. The facility has not submitted Discharge Monitoring Reports since 2nd quarter 2015. The last report submitted did not report any violations of the Final Effluent Limitations in the permit.

Discussion of Inspection and Observations

The inspection was conducted during normal business hours. Prior notification of the inspection was provided to ensure timely access to the site. Upon arrival at the facility, I met with Mr. Jonathan Fribis and outlined the purpose and scope of the inspection. Jonathan Fribis granted permission to access the site and accompanied me throughout the tour of the facility.

The access gate was held up with wire to keep it from falling (see Photo #001; **Notice of Violation item #3**). The facility was surrounded by a fence, but it was seriously damaged in several areas and would not limit unauthorized access (**Notice of Violation item #4**). The primary cell contents had a mild, green color (Photo #002). I noticed only a mild odor coming from the lagoon. There was some berm damage in several areas (**Notice of Violation item #5**). The pipe between the primary and secondary cell was located in the southwestern corner of the primary cell (Photo #003). We could hear water entering the pipe. Water did not discharge over the berms, although it was somewhat high in the western area of the primary cell. The secondary lagoon cell in the southern area of the facility had some duckweed on the water surface. Otherwise, its contents resembled the primary cell. The secondary cell also had some berm damage that would need to be repaired. There was also vegetation growing on the lagoon berms that was higher than the recommended six inch maximum height.

The joint between the effluent pipe from the secondary cell and the chlorine contact chamber was not completely connected (Photo #004). The operator should reconnect it to minimize duckweed on the water surface from discharging. Water was flowing through the chlorine contact chamber and into the effluent structure (Photo #005). The water flowing from the outfall pipe was clear with no visible solids (Photo #006). I collected wastewater samples for analysis (see "Sampling and Monitoring" section below). Although the facility had a chlorination system, it did not have a dechlorination system for eliminating the chlorine residual before discharge (**Notice of Violation item #2**). Typically, a dechlorination tablet feeder is installed following the chlorine contact chamber to neutralize the chlorine (see "Additional Comments/Conclusion" item #3 below). There was a stream flowing from the west to the east that Outfall #001

discharged to. I did not see any impacts to the stream from the discharge and both the upstream and downstream segments had similar appearances (Photos #007 and #008).

Sampling and Monitoring

I took the appropriate sampling materials on the inspection, including a copy of the Missouri Department of Natural Resources' Standard Operating Procedures, as well as instruments for field monitoring that were capable of testing pH, temperature, conductivity, and dissolved oxygen. The field monitoring equipment had been properly calibrated and/or compared to standards in accordance with the St. Louis Regional Office's Quality Assurance/Quality Control procedures.

I conducted on-site water quality monitoring and collected the grab sample at Outfall #001. After collection, I packed the sample into a cooler with ice. I shipped the sample containers to the department's Environmental Services Program for analysis of 5-day Biochemical Oxygen Demand, Total Suspended Solids, and Ammonias as N (Nitrogen). As of the writing of this report, the sample analysis results were not available for inclusion. The sample analysis results will be forwarded to the owner/permittee when they are available.

Outfall #001 for Lake Virginia Subdivision – East Lagoon						
Results of Sample Analyses			Permitted Effluent Limitations			
Parameter	Sample Result	Units	Daily Maximum	Weekly Average	Monthly Average	Units
Grab Sample; Sample #170						
pH ¹	8.58	SU	*		*	SU
Temperature ¹	9.3	°C				
Dissolved Oxygen ¹	6.73	mg/L				
Conductivity ¹	690	µS/cm				
Ammonia as N ²	**	mg/L	***		***	mg/L
Biochemical Oxygen Demand ₅ ²	**	mg/L		45	30	mg/L
Total Suspended Solids ²	**	mg/L		80	60	mg/L

¹On-Site Water Quality Monitoring.

²Sample analysis conducted by Environmental Services Program staff.

*pH is measured in pH units and is not to be averaged. The pH is to be maintained at or above 6.0 pH units.

**Sample analysis results not available as of the writing of this report.

***Monitoring requirement only.

Abbreviations: MPN (Most Probable Number per 100 mL); SU (Standard pH Units)

Compliance Determination

The facilities were found to be in **significant noncompliance** with the Missouri Clean Water Law and the Missouri Clean Water Commission regulations, based upon observations made during the inspection, and a **Notice of Violation (NOV)** is being issued for the violations identified below.

Listing of Violations and Required Actions

Notice of Violation #SL170134

1. Since February 22, 2013, operated, used or maintained a water contaminant source, domestic wastewater from a non-permitted outfall, which discharges to a wet weather branch of Joachim Creek, waters of the state, without a Missouri State Operating Permit (MSOP) [Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A)].
2. Failed to provide a method to dechlorinate the wastewater effluent following the chlorine contact chamber [Section 644.076.1, RSMo, and 10 CSR 20-8.020(13)(D)4.]
3. Failed to provide a lockable gate to limit unauthorized access [Section 644.076.1, RSMo and 10 CSR 20-8.020(11)(C)11.F.].
4. Failed to provide an adequate fence to restrict unauthorized access [Section 644.076, RSMo and 10 CSR 20-8.020(11)(C)11.A.].
5. Failed to maintain the inner berm slopes of the lagoon to be less than three to one (3:1) [Section 644.076.1, RSMo and 10 CSR 20-8.020(13)(A)3.C.].

REQUIRED ACTION: The receiver shall coordinate a response with Kristi Savage-Clarke with the Water Pollution Control Branch's Enforcement Section. The Water Protection Program may require the submittal of the permit renewal application Form B. The Enforcement Section can be reached by mail at the Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102 or by phone at (573) 751-1300.

Recommendations

1. Regularly mow lagoon berms in order to prevent the growth of woody vegetation that can potentially damage the berms. The recommended maximum vegetation height is six inches.
2. Routinely remove duckweed from the lagoon surface in order to maximize sunlight and wind action to add oxygen to the lagoon contents. Removed duckweed should be landfilled or composted in order to prevent discharge to waters of the state.

Additional Comments/Conclusion

1. The St. Louis Regional Office previously referred the facility to the Water Pollution Control Branch's Enforcement Section for enforcement action. The facility receiver should contact Ms. Kristi Savage-Clarke to discuss returning the facility to compliance.

2. The facility needs to commence disinfection of the wastewater effluent during the recreational season (April 1 to October 31).

3. Typically, installation of a dechlorination system at a small wastewater facility is considered a minor modification and does not require a construction permit. Questions regarding modifications to wastewater treatment facilities should be made to the Water Protection Program's Construction Permits Section at (573) 751-1300.

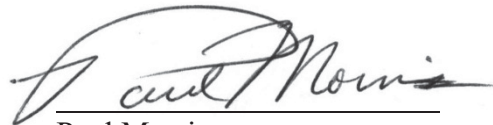
Signatures

SUBMITTED BY:



Christopher Maher
Environmental Specialist
St. Louis Regional Office

REVIEWED BY:



Paul Morris
Environmental Supervisor
St. Louis Regional Office

CCM/PHM/jws

Attachments

Attachment # 1 – Photographs (#001 through #010)

Attachment # 2 – Aerial Map



Photograph: #001
Taken By: Christopher Maher
Facility: Lake Virginia Subdivision - East Lagoon
Permit: MO-0101672
Location: Facility Entrance

Description: Inadequate fence and gate to access facility; facing southwest.

Date Taken: March 8, 2017
Program: WPC Unit



Photograph: #002
Taken By: Christopher Maher
Facility: Lake Virginia Subdivision - East Lagoon
Permit: MO-0101672
Location: Primary Lagoon Cell

Description: View of lagoon berms in eastern area of the lagoon; facing south.

Date Taken: March 8, 2017
Program: WPC Unit



Photograph: #003
Taken By: Christopher Maher
Facility: Lake Virginia Subdivision - East Lagoon
Permit: MO-0101672
Location: Primary Lagoon Cell

Description: Pipe between primary and secondary lagoon cell visible; facing north.

Date Taken: March 8, 2017
Program: WPC Unit



Photograph: #004
Taken By: Christopher Maher
Facility: Lake Virginia Subdivision - East Lagoon
Permit: MO-0101672
Location: Secondary Lagoon Cell

Description: Chlorine contact chamber at secondary lagoon cell; facing west.

Date Taken: March 8, 2017
Program: WPC Unit



Photograph: #005
Taken By: Christopher Maher
Facility: Lake Virginia Subdivision - East Lagoon
Permit: MO-0101672
Location: Outfall Structure

Description: Water flowing through outfall structure; facing northwest.

Date Taken: March 8, 2017
Program: WPC Unit



Photograph: #006
Taken By: Christopher Maher
Facility: Lake Virginia Subdivision - East Lagoon
Permit: MO-0101672
Location: Outfall #001

Description: Water discharging from outfall pipe; facing east.

Date Taken: March 8, 2017
Program: WPC Unit



Photograph: #007
Taken By: Christopher Maher
Facility: Lake Virginia Subdivision - East Lagoon
Permit: MO-0101672
Location: Outfall #001
Description: View of receiving stream upstream of Outfall #001; facing west.

Date Taken: March 8, 2017
Program: WPC Unit



Photograph: #008
Taken By: Christopher Maher
Facility: Lake Virginia Subdivision - East Lagoon
Permit: MO-0101672
Location: Outfall #001
Description: View of receiving stream downstream of Outfall #001; facing southeast.

Date Taken: March 8, 2017
Program: WPC Unit



Site Map: Layout of both the western and eastern lagoons serving the Lake Virginia Subdivision.



Missouri Department of dnr.mo.gov

NATURAL RESOURCES

Eric R. Greitens, Governor

Carol S. Comer, Director

CERTIFIED MAIL 9171969009350149833795

March 23, 2017

Mr. Dale Johannsen, Receiver
Utility Management of Missouri, LLC
6517 NW Office Center
House Springs, MO 63051

**NOTICE OF VIOLATION
NOV#SL170135
RESPONSE REQUIRED**

Dear Mr. Johannsen:

Staff from the Department of Natural Resources conducted an inspection on March 8, 2017 of the Lake Virginia Subdivision – West Lagoon located off of Springdale Court, Hematite, MO in Jefferson County.

The enclosed report documents the serious and significant violations that were identified. A Notice of Violation (NOV) is being issued for the violations.

This case has been referred to the department's Water Pollution Control Branch Enforcement Section for further action. If you have questions regarding the status of the enforcement case or would like to meet with department staff to discuss compliance requirements, please contact Kristi Savage-Clarke, Environmental Supervisor, Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, Missouri 65102 or by phone at (573) 751-1300.

Sincerely,

ST. LOUIS REGIONAL OFFICE

Dorothy Franklin
Regional Director

DEF/CCM/jws

Enclosures

c: Paul Dickerson, Water Pollution Control Branch

Missouri Department of Natural Resources
St. Louis Regional Office/Water Pollution Control Branch
Report of Inspection
Lake Virginia Subdivision - West Lagoon
Southwest of Springdale Court/Hematite/Jefferson County, MO
March 23, 2017

Introduction

Pursuant to Section 644.026.1 of the Missouri Clean Water Law, I, Christopher Maher of the Missouri Department of Natural Resources (department) St. Louis Regional Office (SLRO) conducted a routine water pollution compliance inspection of the Lake Virginia Subdivision - West Lagoon located to the southwest of Springdale Court, Hematite, Jefferson County, Missouri on March 8, 2017. This water pollution control inspection was conducted to determine the facility's compliance with the Missouri Clean Water Law and the Missouri Clean Water Commission Regulations. This report presents the findings and observations made during the compliance inspection, including file review, site visits, and communications with entity representatives.

Participants included:

ECO, Inc.

Jonathan Fribis	Operator	(636) 789-1326	jfribis@ecoincmo.com
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Missouri Department of Natural Resources, St. Louis Regional Office

Christopher Maher	Environmental Specialist	(314) 416-2960	chris.maher@dnr.mo.gov
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Entity Description and History

As part of the inspection, I reviewed the files for the Lake Virginia Subdivision – West Lagoon, including previous inspection reports and correspondence to familiarize myself with the requirements specific to these facilities.

The west lagoon consists of a 1-cell lagoon for the purpose of treating domestic wastewater from the Lake Virginia Subdivision. The receiving stream for this facility is a wet weather branch of Joachim Creek, which is located in the Cahokia-Joachim watershed (HUC 07140101). The facility has been operating without a permit (**Notice of Violation item #1**).

Joe Twellman with the St. Louis Regional Office inspected the west lagoon on April 22, 2010. The St. Louis Regional Office issued a Letter of Warning dated May 5, 2010 for operating without a permit, placing or causing pollution, failing to maintain two feet of freeboard in the lagoon, failure to maintain the lagoon berms, the presence of deep-rooted vegetation, failure to prevent stormwater flows to the lagoon system, and failure to convey the discharge to the receiving stream through an outfall pipe. Nicole M. Pfeffer submitted a response letter dated June 25, 2010, stating that they were submitting the permit applications, they were evaluating the issues with the freeboard, they were contacting contractors regarding the erosion damage, stormwater issues and removing the vegetation. Mr. Twellman conducted a follow-up inspection on August 10, 2010. He found the facility to be in noncompliance for the same deficiencies as the April 22, 2010 inspection.

Mr. Twellman and Ms. Darcy Chase with the SLRO also conducted a field investigation of the facility on October 3, 2012. The west lagoon was found to be in noncompliance for operating without a permit, failure to maintain freeboard, significant damage to the berms, failure to prevent stormwater from entering the lagoon, and failure to convey discharge through an outfall.

Discussion of Inspection and Observations

The inspection was conducted during normal business hours. Prior notification of the inspection was provided to ensure timely access to the site. Upon arrival at the facility, I met with Mr. Jonathan Fribis and outlined the purpose and scope of the inspection. Mr. Fribis granted permission to access the site and accompanied me throughout the tour of the facility.

The facility was surrounded by a fence, although it was damaged in several areas and could potentially allow for unauthorized access. We were able to enter facility through a gap between the gate and the fence (**Notice of Violation item #2**). The water surface had some duckweed present, though not enough to prevent sunlight or wind action (Photo #001). On the northeastern berm of the lagoon, there was a spot where stormwater from a neighboring property could enter the lagoon (see Photo #002; **Notice of Violation item #4**). Portions of the lagoon had erosion damage, especially in the southern corner of the lagoon (see Photo #003; **Notice of Violation item #3**). There was vegetation growing on the lagoon berms. The vegetation included grasses and small bushes. The vegetation should be cut down as soon as possible to prevent the growth of woody vegetation that could damage the lagoon berms.

We walked to the south of the facility to determine if there was a discharge. We found a wet-weather ditch and a small amount of standing water. However, we did not find any evidence of a surface discharge from the lagoon.

Sampling and Monitoring

I took the appropriate sampling materials on the inspection, including a copy of the Missouri Department of Natural Resources' Standard Operating Procedures, as well as instruments for field monitoring that were capable of testing pH, temperature, conductivity, and dissolved oxygen. The field monitoring equipment had been properly calibrated and/or compared to standards in accordance with the St. Louis Regional Office's Quality Assurance/Quality Control procedures.

I did not collect samples from the facility as it was not discharging at the time of the inspection.

Compliance Determination

The facility was found to be in **significant noncompliance** with the Missouri Clean Water Law and the Missouri Clean Water Commission regulations based upon observations made during the inspection, and a **Notice of Violation (NOV)** is being issued for the violations identified below.

Listing of Violations and Required Actions

Notice of Violation #SL170135

1. On March 8, 2017, operated, used or maintained a water contaminant source, domestic wastewater from a wastewater lagoon without a Missouri State Operating Permit (MSOP) [Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A)].

2. Failed to provide a lockable gate to limit unauthorized access [Section 644.076.1, RSMo and 10 CSR 20-8.020(11)(C)11.F].
3. Failed to maintain the inner berm slopes of the lagoon to be less than three to one (3:1) [Section 644.076.1, RSMo and 10 CSR 20-8.020(13)(A)3.C.].
4. The storm water diversions of the lagoon system are not adequately preventing storm water from entering the lagoon system [Section 644.076.1, RSMo, and 10 CSR 20-8.020(13)(A)3.F.].

REQUIRED ACTION: The receiver shall coordinate a response with Kristi Savage-Clarke with the Water Pollution Control Branch's Enforcement Section. The Water Protection Program may require the submittal of a permit application Form B. The Enforcement Section can be reached by mail at the Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102 or by phone at (573) 751-1300.

Recommendations

1. Regularly mow lagoon berms in order to prevent the growth of woody vegetation that can potentially damage the berms. The recommended maximum vegetation height is six inches.
2. Routinely remove duckweed from the lagoon surface in order to maximize sunlight and wind action to add oxygen to the lagoon contents. Removed duckweed should be landfilled or composted in order to prevent discharge to waters of the state.

Additional Comments/Conclusion

1. The St. Louis Regional Office previously referred the facility to the Water Pollution Control Branch's Enforcement Section for enforcement action. The facility receiver should contact Ms. Kristi Savage-Clarke to discuss returning the facility to compliance.

Signatures

SUBMITTED BY:



Chris Maher
Environmental Specialist
St. Louis Regional Office

REVIEWED BY:



Paul Morris
Environmental Supervisor
St. Louis Regional Office

CCM/PHM/jws

Attachments

- Attachment # 1 – Photographs (#001 through #003)**
- Attachment # 2 – Aerial Map**



Photograph: #001
Taken By: Chris Maher
Facility: Lake Virginia Subdivision - West Lagoon
Permit: No Permit
Location: Facility Entrance

Description: View of northeastern berm of facility; facing west.

Date Taken: March 8, 2017
Program: WPC Unit



Photograph: #002
Taken By: Chris Maher
Facility: Lake Virginia Subdivision - West Lagoon
Permit: No Permit
Location: Northeastern Lagoon Berm

Description: Location where stormwater can flow into the lagoon; facing north.

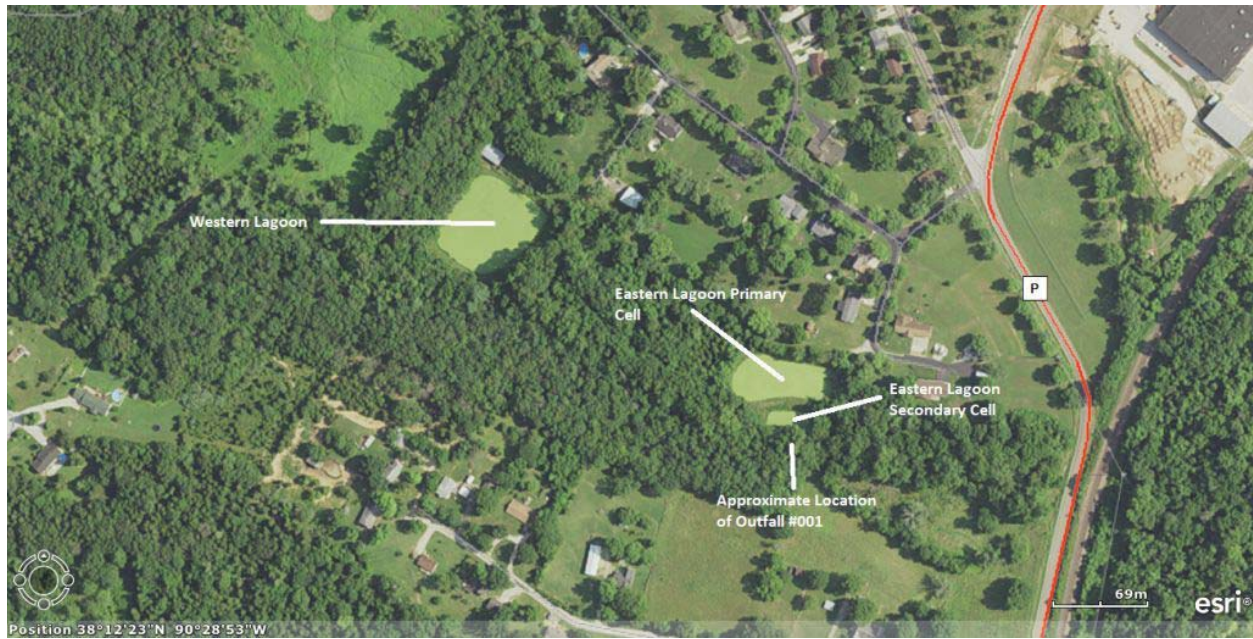
Date Taken: March 8, 2017
Program: WPC Unit



Photograph: #003
Taken By: Chris Maher
Facility: Lake Virginia Subdivision - West Lagoon
Permit: No Permit
Location: Southern Corner of Lagoon

Description: Erosion damage at southern corner of lagoon; facing east.

Date Taken: March 8, 2017
Program: WPC Unit



Site Map: Layout of both the western and eastern lagoons serving the Lake Virginia Subdivision.

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>File No. WC-2017-0325</u>
)	
The Willows Utility Company,)	
)	
Respondent.)	
)	
CERTIFIED MAIL)	

ORDER GIVING NOTICE OF CONTESTED CASE AND DIRECTING ANSWER

Issue Date: June 7, 2017

Effective Date: June 7, 2017

On June 6, 2017, the Staff of the Missouri Public Service Commission (“Complainant”) filed a complaint with the Missouri Public Service Commission (“Commission”) against The Willows Utility Company (“Respondent”). A copy of the complaint accompanies this notice. This is a contested case¹ pursuant to Section 386.390, RSMo 2016. This case will not proceed under the small formal complaint process.²

The Commission will set a deadline for the Respondent to file an answer. 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.

¹ A “[c]ontested case’ means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.” Section 536.010.4, RSMo Supp. 2012.
² 4 CSR 240-2.070(15).

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.

As required by Section 536.067(2)(f), RSMo 2016, the Commission informs the parties that the Commission's provisions governing procedures before the Commission, including provisions relating to discovery, are found at Commission Rule 4 CSR 240-2.090.

THE COMMISSION ORDERS THAT:

1. The Commission's Data Center shall send, by certified mail, a copy of this notice and order and a copy of the complaint to:

The Willows Utility Company
c/o Paul Liechty
P.O. Box 140099
Dallas, TX 75214

2. The Willows Utility Company shall file an answer to this complaint or a request for mediation no later than July 7, 2017, and serve a copy upon the Complainant. 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

or filed using the Commission's electronic filing and information service.

3. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Michael Bushmann, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 7th day of June, 2017.

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	<u>Case No. WC-2017-</u>
)	
The Willows Utility Company, Paul Liechty P.O. Box 140099 Dallas, TX 75214)	<u>Case No. SC-2017-</u>
)	
Respondent.)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission, through the undersigned counsel, and pursuant to Section 386.390 RSMo. (2000)¹ and 4 CSR 240-2.070(1), files this Complaint with the Missouri Public Service Commission against Respondent, The Willows Utility Company, for violation of the Commission's statutes and rules relating to the filing of annual reports. In support of its Complaint, Staff respectfully states the following:

Introduction

1. This matter concerns Respondent's failure to timely file an annual report as required by Section 393.140(6), RSMo. and Commission Rules 4 CSR 240-3.335 and 4 CSR 240-3.640.

¹ All statutory references are to RSMo 2000, as currently supplemented.

Parties

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Staff Counsel's Office as authorized by Commission Rule 4 CSR 240-2.070(1).

3. Respondent is The Willows Utility Company, a Missouri corporation in good standing. Respondent's official representative is Paul Liechty, P.O. Box 140099, Dallas, TX 75214. This Commission granted Respondent a Certificate of Convenience and Necessity ("CCN") authorizing the Company to provide water and sewer service to the public for gain on December 27, 1979, in Case No. WA-80-86 in Greene County. Pursuant to this CCN, Respondent provides water and sewer service to approximately 186 residential customers in Greene County, Missouri.

General Allegations

4. Respondent is a "water corporation" as defined by Section 386.020(59), RSMo., a "sewer corporation" as defined by Section 386.020(49), RSMo., and a "public utility" as defined by Section 386.020(43), RSMo., and thus is subject to the jurisdiction of this Commission pursuant to Section 386.250(3), RSMo.

5. Section 386.390.1, RSMo. authorizes the Commission to entertain a complaint "setting forth any act or thing done or omitted to be done by any...public utility...in violation, or claimed to be in violation, of any provision of law, or of any rule, or order or decision of the commission."

6. Section 386.600, RSMo. provides, "an action to recover a penalty...under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall

be commenced and prosecuted to final judgment by the general counsel to the commission.”

Respondent has failed to submit its 2016 annual report

7. Complainant hereby adopts by reference and re-alleges the allegations set out in paragraphs one (1) through six (6) above.

8. Section 393.140(6), RSMo. requires every water corporation and every sewer corporation to file with the Commission an annual report, and Rule 4 CSR 240-3.640(1) requires the annual report to be filed with the Commission on or before April 15 of each year.

9. On May 10, 2017, Staff mailed a letter to the Company notifying Respondent that the Commission had not received the Company’s 2016 annual reports and that the Respondent would be subject to legal action if the Company did not file its 2016 annual reports by May 20, 2017.

10. Respondent did not file its 2016 annual reports by May 20, 2017.

11. As of the date of this filing, Respondent has failed, omitted, or neglected to file its calendar year 2016 annual report.

12. Section 393.140(6), RSMo. states, “[a]ny such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same...”

WHEREFORE, Staff respectfully requests the Commission give notice to the Respondent as required by law and, after the opportunity for hearing, issue an order

that finds the Respondent failed, omitted, or neglected to file an annual report for 2016 and authorizes the General Counsel's Office to bring a penalty action against the respondent in circuit court as provided in Sections 386.600 and 393.140(6), RSMo.

Respectfully submitted,

/s/ Marcella L. Forck
Associate Staff Counsel
Attorney for the Staff of the
Missouri Bar No. 66098
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9265 (Fax)
Marcella.Forck@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record this 6th day of June, 2017.

/s/ Marcella L. Forck



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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. The Regulatory Law Judges at the Public Service Commission are trained mediators and this service is offered to parties who have formal complaints pending before the Public Service Commission at no charge. In addition, 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.

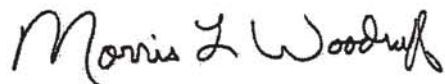
The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating 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 Judge assigned to be the mediator will not be the same Judge assigned to the contested complaint.

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.



Morris L. Woodruff
Secretary



Rules of Department of Economic Development

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**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 240—Public Service
Commission
Chapter 2—Practice and Procedure**

4 CSR 240-2.010 Definitions

PURPOSE: This rule defines terms used in the rules comprising Chapter 2, Practice and Procedure, and supplements those definitions found in Chapter 386 of the Missouri Revised Statutes.

- (1) Applicant means any person, as defined herein, or public utility on whose behalf an application is made.
- (2) Certificate of service means a document or page of a document showing the caption of the case, attorney of record served or the name of the party served, the date and manner of service, and the signature of the serving party or attorney.
- (3) Commission means the Missouri Public Service Commission as created by Chapter 386 of the *Missouri Revised Statutes*.
- (4) Commissioner means one (1) of the members of the commission.
- (5) Commission staff means all personnel employed by the commission whether on a permanent or contractual basis except commissioners; commissioner support staff, including technical advisory staff; personnel in the secretary's office; and personnel in the general counsel's office, including personnel in the adjudication department. Employees in the staff counsel's office are members of the commission staff.
- (6) Complainant means the commission, any person, corporation, municipality, political subdivision, the Office of the Public Counsel, the commission staff through the staff counsel's office, or public utility who files a complaint with the commission.
- (7) Corporation includes a corporation, company, association, or joint stock company or association, or any other entity created by statute which is allowed to conduct business in the state of Missouri.
- (8) General counsel means the attorney who serves as counsel to the commission and includes the general counsel and all other attorneys who serve in the office of the general counsel, but does not include attorneys employed in the staff counsel's office. The general counsel appears for the commission

and performs all duties and services as attorney and counsel to the commission which the commission may reasonably require.

- (9) Oath means attestation by a person signifying that he or she is bound in conscience and by the laws regarding perjury, either by swearing or affirmation to tell the truth.
- (10) Party includes any applicant, complainant, petitioner, respondent, intervenor, or public utility in proceedings before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate within the period of time established for interventions by commission rule or order.
- (11) Person includes a natural person, corporation, municipality, political subdivision, state or federal agency, and a partnership.
- (12) Pleading means any written document, including any exhibits or other attachments, filed with the commission that seeks a specific action or remedy, except that briefs and tariffs are not pleadings under this definition.
- (13) Political subdivision means any township, city, town, village, and any school, road, drainage, sewer, and levee district, or any other public subdivision, public corporation, or public quasi-corporation having the power to tax.
- (14) Presiding officer means a commissioner, or a law judge licensed to practice law in the state of Missouri and appointed by the commission to preside over a case or any portion of a case.
- (15) Public counsel means the Office of the Public Counsel as created by the Omnibus State Reorganization Act of 1974 and includes the assistants who represent the public before the commission.
- (16) Public utility includes every pipeline corporation, gas corporation, electrical corporation, telecommunications corporation, water corporation, heat or refrigeration corporation, sewer corporation, any joint municipal utility commission pursuant to section 386.020, RSMo, which is regulated by the commission, or any other entity described by statute as a public utility which is to be regulated by the commission.
- (17) Respondent means any person as defined herein or public utility subject to regulation by the commission against whom any complaint is filed.

(18) Rule means all of these rules as a whole or the individual rule in which the word appears, whichever interpretation is consistent with the rational application of this chapter.

(19) Settlement officer means a presiding officer who has been delegated to facilitate the settlement of a case.

(20) Schedule means any attachment, table, supplement, list, output, or any other document affixed to an exhibit.

(21) Staff counsel means any attorney employed to represent the commission staff in proceedings before the commission. For administrative purposes only, the staff counsel's office is considered part of the general counsel's office, and the chief staff counsel reports to the general counsel. However, the staff counsel's office performs its advocacy functions independently, under the direction of the chief staff counsel in consultation with the executive director and the directors of the operations and utility services divisions.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Amended: Filed Aug. 17, 1998, effective March 30, 1999. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.015 Waiver of Rules

PURPOSE: This rule defines when the rules in this chapter may be waived.

(1) A rule in this chapter may be waived by the commission for good cause.

AUTHORITY: section 386.410, RSMo Supp. 1998. Original rule filed Aug. 24, 1999, effective April 30, 2000.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.020 Meetings and Hearings
(Rescinded October 30, 2009)



AUTHORITY: section 386.410, RSMo Supp. 1998. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Amended: Filed July 26, 1999, effective Jan. 30, 2000. Rescinded: Filed April 6, 2009, effective Oct. 30, 2009.

4 CSR 240-2.025 Commission Address and Business Hours

PURPOSE: This rule provides the physical and mailing address, as well as the hours of business for the Public Service Commission.

(1) The Public Service Commission’s principal office is located in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

(2) The public may obtain information, make requests, or make submissions by mail addressed to the Secretary of the Commission, Missouri Public Service Commission, PO Box 360, Jefferson City, MO 65102, electronically at the commission’s Internet website, or in person at the commission’s principal office during regular business hours.

(3) The regular business hours of the Missouri Public Service Commission are Monday through Friday, 8:00 a.m. to 5:00 p.m., except on state holidays when the offices are closed.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.030 Records of the Commission

PURPOSE: This rule sets forth the record-keeping requirements of the commission and the availability of these records to the public. Charges for copies are subject to statutory limitations.

(1) The secretary of the commission shall keep a full and true record of all the proceedings of the commission, of all books, maps, documents, and papers ordered filed by the commission, of all orders made by each of the commissioners, and of all orders made by the commission or approved and confirmed by it and ordered filed. In addition, the secretary of the commission shall maintain a

docket of all cases filed and cases set for hearing and shall assign each matter an appropriate case number. These records shall be available for public inspection in the office of the secretary of the commission, during regular business hours, Monday through Friday, except for legal holidays. The specific hours the records are available shall be posted at the principal office of the commission.

(2) Copies of public records (for example, official documents, pleadings, transcripts, briefs, and orders) may be requested from the secretary of the commission. Any such request shall be made in writing.

(3) The fees for copying public records shall not exceed ten cents (\$.10) per page for a paper copy not larger than nine inches by fourteen inches (9" x 14"), with the hourly fee for duplicating time not to exceed the average hourly rate of pay for the clerical staff of the commission fulfilling the request and the actual cost of research time. The commission shall utilize employees to make copies and conduct the research so that the lowest amount of charges are incurred based on the scope of the request.

(4) Fees for providing access to public records maintained on computer facilities, recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations, or similar audio or visual items or devices, and for paper copies larger than nine inches by fourteen inches (9" x 14") shall include only the cost of copies, staff time, which shall not exceed the average hourly rate of pay for staff of the public governmental body required for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. Fees for maps, blueprints, or plats that require special expertise to duplicate may include the actual rate of compensation for the trained personnel required to duplicate such maps, blueprints, or plats. If programming is required beyond the customary and usual level to comply with a request from records or information, the fees for compliance may include the actual costs of such programming.

(5) Copies may be provided without charge or at a reduced charge to public officers for use in their official capacity, or in any other situation where the Public Service Commission determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Pub-

lic Service Commission and is not primarily in the commercial interest of the requester.

AUTHORITY: sections 386.300 and 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Amended: Filed July 26, 1999, effective Jan. 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.300, RSMo 1939, amended 1947, 1984, 1995 and 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.040 Practice Before the Commission

PURPOSE: This rule sets forth who may practice as an attorney before the commission.

(1) The staff counsel represents the commission staff in investigations, contested cases, and other proceedings before the commission.

(2) The public counsel represents the interests of the public before the commission.

(3) Attorneys who wish to practice before the commission shall fully comply with its rules and also comply with one (1) of the following criteria:

(A) An attorney who is licensed to practice law in the state of Missouri, and in good standing, may practice before the commission;

(B) A nonresident attorney who is a member of the Missouri Bar in good standing, but who does not maintain an office for the practice of law within the state of Missouri, may appear as in the case of a resident attorney;

(C) Any attorney who is not a member of the Missouri Bar, but who is a member in good standing of the bar of any court of record, may petition the commission for leave to be permitted to appear and participate in a particular case under all of the following conditions:

1. The visiting attorney shall file in a separate pleading a statement identifying each court of which that attorney is a member and certifying that neither the visiting attorney nor any member of the attorney’s firm is disqualified to appear in any of these courts;

2. The statement shall designate some member in good standing of the Missouri Bar having an office within Missouri as associate



counsel;

3. The designated Missouri attorney shall simultaneously enter an appearance as an attorney of record; and

4. The visiting attorney shall provide a receipt or a statement showing that he or she has complied with the requirement of Missouri Supreme Court Rule 6.01(m).

(4) An eligible law student certified under Missouri Supreme Court Rule 13 may appear before the commission as an attorney. The student must comply with any applicable rules or statutes.

(5) Practice by Nonattorneys. A natural person may represent himself or herself. Such practice is strictly limited to the appearance of a natural person on his or her own behalf and shall not be made for any other person or entity.

(6) After an attorney has entered an appearance for any party, the attorney may withdraw only by leave of the commission.

AUTHORITY: section 386.410, RSMo 2000.* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

Smith v. Public Service Commission, 336 S.W.2d 491 (Mo. 1960). *Commission Rule 12.07 allowing individual party before commission held not to authorize non-lawyer individual to act as attorney for twenty-five other individuals. See also Reed v. Labor and Industrial Relations*, 789 S.W.2d 19 (Mo. banc 1990) and *Clark v. Austin*, 340 Mo. 647, 101 S.W.2d 977 (Mo. 1937).

4 CSR 240-2.045 Electronic Filing (Rescinded October 30, 2011)

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 7, 2001, effective May 30, 2002. Rescinded: Filed March 2, 2011, effective Oct. 30, 2011.

4 CSR 240-2.050 Computation of Time

PURPOSE: This rule sets standards for computation of effective dates of any order or

time prescribed by the commission when no specific date is set by commission order.

(1) In computing any period of time prescribed or allowed by the commission, the day of the act, event, or default shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. This rule does not apply when the commission establishes a specific date by which an action must occur, nor does it operate to extend effective dates which are established by statute.

(2) Except when the issuance and effective date are the same, in computing the effective date of any order of the commission, the day the order was issued shall not be included, and the order is considered effective at 12:00 a.m. on the effective date designated in the order, whether or not the date is a Saturday, Sunday, or legal holiday. If the effective date and the issuance date are the same, the order shall be effective at the date and time the order is issued by the commission.

(3) When an act is required or allowed to be done by order or rule of the commission at or within a specified time, the commission may—

(A) Order the period enlarged before the expiration of the period originally prescribed or as extended by a previous order; or

(B) After the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect or for other good cause shown.

AUTHORITY: section 386.410, RSMo 2000.* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

State ex rel. Alton R. Co. v. Public Service Commission, 536 S.W.2d 766 (Mo. 1941). The effective date of an order is at the beginning of that date, rather than at its close.

4 CSR 240-2.060 Applications

PURPOSE: Applications to the commission requesting relief under statutory or other authority must meet the requirements set forth in this rule.

(1) All applications shall comply with the requirements of these rules and shall include the following information:

(A) The legal name of each applicant, a brief description of the legal organization of each applicant, whether a Missouri corporation, foreign corporation, partnership, proprietorship, or other business organization, the street and mailing address of the principal office or place of business of each applicant and each applicant's electronic mail address, fax number and telephone number, if any;

(B) If any applicant is a Missouri corporation, a Certificate of Good Standing from the secretary of state;

(C) If any applicant is a foreign corporation, a certificate from the secretary of state that it is authorized to do business in Missouri;

(D) If any applicant is a partnership, a copy of the partnership agreement;

(E) If any applicant does business under a fictitious name, a copy of the registration of the fictitious name with the secretary of state;

(F) If any applicant is a political subdivision, a specific reference to the statutory provision and a specific reference to any other authority, if any, under which it operates;

(G) If any applicant has submitted the applicable information as set forth in subsections (1)(B)–(F) of this rule in a previous application, the same may be incorporated by reference to the case number in which the information was furnished, so long as such applicable information is current and correct;

(H) A brief statement of the character of business performed by each applicant;

(I) Name, title, address, and telephone number of the person to whom correspondence, communications, and orders and decision of the commission are to be sent, if other than to the applicant's legal counsel;

(J) If any applicant is an association, other than an incorporated association or other entity created by statute, a list of all of its members;

(K) A statement indicating whether the applicant has any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment, or decision has occurred within three (3) years of the date of the application;

(L) A statement that no annual report or assessment fees are overdue; and



(4) A case file shall be established for a tariff filing in which the commission is required by law or requested by the party filing the tariff to specifically approve the tariff.

(5) A case file will not be established to consider tariff sheets submitted by a regulated utility which do not meet the circumstances of sections (1)-(4) of this rule, except that a case file shall be established when tariff sheets are suspended by the commission on its own motion or when suspended upon the recommendation of staff.

(6) When a public utility extends the effective date of a tariff, it shall file a letter extending the tariff effective date in the official case file. Notwithstanding any other provision of these rules, this letter may be filed by a nonattorney.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.070 Complaints

PURPOSE: This rule establishes the procedures for filing formal and informal complaints with the commission.

(1) Any person or public utility who feels aggrieved by an alleged violation of any tariff, statute, rule, order, or decision within the commission's jurisdiction may file a complaint. A complaint may also be filed by the commission on its own motion, the commission staff through the staff counsel, or the Office of the Public Counsel.

(2) A person who feels aggrieved by an alleged violation of any tariff, statute, rule, order, or decision within the commission's jurisdiction may file an informal complaint with the commission's consumer services department or file either a formal complaint or small formal complaint with the commission. Filing an informal complaint is not a prerequisite to filing a formal or small formal complaint; however, the presiding officer may direct that a *pro se* complainant be required to go through the informal complaint procedure before the formal complaint will be heard by the commission. If an allegedly aggrieved person initially files an informal complaint and is not satisfied with the out-

come, such person may also file a formal or small formal complaint.

(3) Informal Complaints. The protections and processes of an informal complaint regarding service or billing practices are set out in 4 CSR 240-13. To file an informal complaint, the complainant shall state, either in writing, by telephone (consumer services hotline 1-800-392-4211 or Relay Missouri at 711), or in person at the commission's offices—

(A) The name, street address, and telephone number of each complainant and, if one (1) person asserts authority to act on behalf of the others, the source of that authority;

(B) The address where the utility service was rendered;

(C) The name and address of the party against whom the complaint is filed;

(D) The nature of the complaint and the complainant's interest therein;

(E) The relief requested; and

(F) The measures taken by the complainant to resolve the complaint.

(4) Formal Complaints. A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission. The formal complaint shall contain the following information:

(A) The name and street address of each complainant and, if different, the address where the subject utility service was rendered;

(B) The signature, telephone number, facsimile number, and email address of each complainant or their legal representative, where applicable;

(C) The name and address of the person, corporation, or public utility against whom the complaint is being filed;

(D) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;

(E) The relief requested;

(F) A statement as to whether the complainant has directly contacted the person, corporation, or public utility about which complaint is being made;

(G) The jurisdiction of the commission over the subject matter of the complaint; and

(H) If the complainant is an association, other than an incorporated association or other entity created by statute, a list of all its members.

(5) No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any public utility unless the complaint is signed by the public counsel, the mayor or the president or chairman of the board of aldermen or a majority of the council or other legislative body of any town, village, county, or other political subdivision, within which the alleged violation occurred, or not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of public utility gas, electricity, water, sewer, or telephone service as provided by law. Any public utility has the right to file a formal complaint on any of the grounds upon which complaints are allowed to be filed by other persons and the same procedure shall be followed as in other cases.

(6) The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

(7) The commission, on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim on which relief may be granted or failure to comply with any provision of these rules or an order of the commission, or may strike irrelevant allegations.

(8) Upon the filing of a complaint in compliance with these rules, the secretary of the commission shall serve by certified mail, postage prepaid, a copy of the complaint upon the person, corporation, or public utility against whom the complaint has been filed, which shall be accompanied by a notice that the matter complained of be satisfied or that the complaint be answered by the respondent, unless otherwise ordered, within thirty (30) days of the date of the notice.

(9) The respondent shall file an answer to the complaint within the time provided. All grounds of defense, both of law and of fact, shall be raised in the answer. If the respondent has no information or belief upon the subject sufficient to enable the respondent to answer an allegation of the complaint, the respondent may so state in the answer and assert a denial upon that ground.

(10) If the respondent in a complaint case fails to file a timely answer, the complainant's averments may be deemed admitted and an order granting default entered. The respondent has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default and extend the filing date of the answer. The commission may grant the motion to set aside the



order of default and grant the respondent additional time to answer if it finds good cause.

(11) The commission may order, at any time after the filing of a complaint, an investigation by its staff as to the cause of the complaint. The staff shall file a report of its findings with the commission and all parties to the complaint case. The investigative report shall not be made public unless released in accordance with section 386.480, 392.210(2), or 393.140(3), RSMo, or during the course of the hearing involving the complaint.

(12) When the commission determines that a hearing should be held, the commission shall fix the time and place of the hearing. The commission shall serve notice upon the affected person, corporation, or public utility not fewer than ten (10) days before the time set for the hearing, unless the commission finds the public necessity requires that the hearing be held at an earlier date.

(13) All matters upon which a complaint may be founded may be joined in one (1) hearing and no motion for dismissal shall be entertained against a complainant for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties.

(14) When an order is rendered disposing of a case, the regulatory law judge shall cause the parties to be notified that the order will be final unless an application for rehearing is filed within the allotted number of days and provide information regarding the rehearing and appeal process.

(15) Small Formal Complaint Case. If a customer of a utility files a formal complaint regarding any dispute involving less than three thousand dollars (\$3,000), the process set forth in this section shall be followed for such complaints. The provisions of sections (1)–(14) of this rule shall also apply to small formal complaints.

(A) When a complaint is filed that qualifies for handling as a small formal complaint, the assigned regulatory law judge shall direct the secretary of the commission to serve, by certified mail, postage prepaid, a copy of the complaint upon the person, corporation, or public utility against whom the complaint has been filed. At the same time, the regulatory law judge shall notify all parties that the complaint will proceed under the small formal complaint process. The person, corporation, or public utility against whom the complaint has been filed is allowed thirty (30) days after the date

of notice to satisfy the complaint or file an answer. If the person, corporation, or public utility does not satisfy the complaint or file an answer within thirty (30) days, the regulatory law judge may issue an order granting default and deeming the allegations of the complaint to have been admitted by the respondent. A party in default has seven (7) days from the issue date of the order granting default to file a motion to set aside the order of default. The regulatory law judge may grant the motion to set aside the order of default and allow the respondent additional time to answer upon a showing of good cause.

(B) If any party believes that a complaint should or should not be handled as a small formal complaint, that party may file a motion with the commission requesting that the status of the complaint be changed. In response to such motion, or acting on its own motion, the commission shall, at its discretion, decide how the complaint shall be handled.

(C) Upon the filing of a complaint that qualifies under this section, the chief regulatory law judge shall assign the case to a regulatory law judge. To process small complaint cases in the timeliest manner and in the most convenient location for the customers, the commission hereby delegates the commission's authority to hear the case, make rulings, and issue a recommended report and order or other appropriate order disposing of the case to such regulatory law judge.

(D) The commission's staff shall, within forty-five (45) days after the complaint is filed, investigate the complaint and file a report detailing staff's findings and recommendations. The regulatory law judge may allow staff additional time to complete its investigation for good cause shown. The member or members of the commission's staff who investigate the complaint shall be available as a witness at the hearing if the regulatory law judge or any party wishes to call them to testify. Staff shall not advocate a position beyond reporting the results of its investigation. If staff believes it should advocate a position, it may file a motion to change the status of the complaint under subsection (B) of this section.

(E) Any hearing, unless otherwise agreed to by the parties, shall be held in the county, or a city not within a county, where the subject utility service was rendered or within thirty (30) miles of where the service was rendered. The regulatory law judge may allow any party, witness, or attorney to participate in the hearing by telephone.

(F) Small formal complaint case hearings shall be conducted in an informal summary manner whenever possible, without affecting

the rights of the parties—

1. The technical rules of evidence shall not apply;

2. The regulatory law judge shall have the authority to dispense with pre-filed written testimony; and

3. The regulatory law judge shall assume an affirmative duty to determine the merits of the claims and defenses of the parties and may question parties and witnesses.

(G) The regulatory law judge, after affording the parties reasonable opportunity for discovery and a fair hearing, shall issue a recommended report and order within one hundred (100) days following the filing of the complaint, unless the regulatory law judge finds good cause to extend that time or the extension is otherwise agreed to by the parties.

(H) Any party subject to a recommended order disposing of the case or a recommended report and order issued by a regulatory law judge under this section may file with the commission, within ten (10) days of the issuance of the recommended order, comments supporting or opposing the recommended order. Any comments opposing the recommended order shall contain specific detailed grounds upon which it claims the order is unlawful, unjust, or unreasonable. The commission may approve or reject the recommended order based on the existing record without further hearing. If the commission rejects the recommended order, the commission shall issue its own order based on the evidence previously submitted, or upon such additional evidence, as the commission shall choose to receive.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 24, 2010, effective Oct. 30, 2010. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.075 Intervention

PURPOSE: This rule prescribes the procedures by which an individual or entity may intervene in a case and allows for the filing of briefs by amicus curiae.



(1) A motion to intervene or add new member(s) shall be filed within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission.

(2) A motion to intervene or add new member(s) shall include:

(A) The legal name of each association, person, or entity seeking intervention or to be added;

(B) The street and mailing address of the principal office or place of business of each association, person, or entity seeking intervention or to be added, or of their attorney;

(C) The email address, fax number, and telephone number, if any, of each association, person, or entity seeking intervention or to be added, or their attorney;

(D) If any applicant is an association, other than an incorporated association or other entity created by statute, a list of all of its members;

(E) A statement of the proposed intervenor's or new member's interest in the case and reasons for seeking intervention or to be added; and

(F) A statement as to whether the proposed intervenor or new member supports or opposes the relief sought or that the proposed intervenor or new member is unsure of the position it will take.

(3) The commission may grant a motion to intervene or add new member(s) if—

(A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

(4) If the commission grants intervention to an association, other than an incorporated association or other entity created by statute, the commission is not granting intervention to the "association," but is granting intervention to the individual members of the association.

(5) For purposes of 4 CSR 240-2.080(16), service upon counsel for an association satisfies the requirement for service upon the individual members of the association.

(6) If any member(s) of an association, other than an incorporated association or other entity created by statute, that is a party to any case before the commission withdraws from the association during the pendency of a case, the association must file a notice of the member's(s') withdrawal in the official case file

within five (5) days of the member's(s') withdrawal.

(7) If an association, other than an incorporated association or other entity created by statute, that is a party to any case before the commission wants to add an additional member(s) during the pendency of that case, the association must file a motion to add new member(s).

(8) If the commission finds that the name of any association, other than an incorporated association or other entity created by statute, seeking intervention in a case before the commission could lead to confusion or misidentification of that association or its members, the commission may order that the association be identified by an alternate name in that case.

(9) The commission may limit an intervention to particular issues or interests in a case.

(10) Motions to intervene or add new member(s) filed after the intervention date may be granted upon a showing of good cause. Any motion so filed must include a definitive statement whether or not the entity seeking intervention or to be added as a new member accepts the record established in that case, including the requirements of any orders of the commission, as of the date the motion is filed.

(11) Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. The petition for leave must state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case. The brief may be submitted simultaneously with the petition. Unless otherwise ordered by the commission, the brief must be filed no later than the initial briefs of the parties and comply with all applicable briefing requirements. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.

*AUTHORITY: section 386.410, RSMo 2000. *Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002, effective Nov. 30, 2002. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.080 Pleadings, Filing, and Service

PURPOSE: This rule prescribes the content and procedure for filing pleadings before the commission and for service thereof.

(1) Every pleading or brief shall be signed by an attorney of record with the attorney's individual name or, if a natural person is not represented by an attorney, shall be signed by the natural person.

(2) By signing a pleading, the signer represents that he or she is authorized to so act.

(3) Pleadings or briefs shall include the signer's address, state bar number(s), email address, fax number, and telephone number, if any.

(4) Each pleading shall include a clear and concise statement of the relief requested, a specific reference to the statutory provision or other authority under which relief is requested, and a concise statement of the facts entitling the party to relief.

(5) An unsigned pleading or brief may be rejected.

(6) By presenting or maintaining a claim, defense, request, demand, objection, contention, or argument in a pleading, motion, brief, or other document filed with or submitted to the commission, an attorney or party is certifying to the best of the signer's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that—

(A) The claim, defense, request, demand, objection, contention, or argument is not presented or maintained for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(B) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(C) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(D) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.



(7) Any person filing a pleading or a brief shall file with the secretary of the commission either—

- (A) The original; or
- (B) An electronic copy.

(8) Each pleading may be accompanied by a cover letter which states the subject matter. This cover letter shall contain no matter for commission decision.

(9) Any document's filing date shall be the date and time the document is physically or electronically stamped as filed by the secretary of the commission. Documents physically received in the commission's data center during regular business hours shall be stamped on the date received. Documents physically received in the commission's data center after regular business hours shall be stamped the next day that the commission has regular business hours. Documents submitted electronically to the commission's electronic filing and information system (EFIS) will be stamped filed on the date and time the document is received in EFIS and will be deemed filed on that date and time.

(10) Pleadings and briefs in every instance shall display on the cover or first page the case number and the title of the case. In the event the title of a case contains more than one (1) name as applicants, complainants, or respondents, it shall be sufficient to show only the first of these names as it appears in the first document commencing the case, followed by an appropriate abbreviation (et al.) indicating the existence of other parties.

(11) Pleadings and briefs that are not electronically filed shall be bound at the top or at an edge, shall be typewritten or printed upon white, eight and one-half by eleven-inch (8 1/2" × 11") paper. Attachments to pleadings or briefs shall be annexed and folded to eight and one-half by eleven-inch (8 1/2" × 11") size whenever practicable. Printing on both sides of the page is encouraged. Lines shall be double-spaced, except that footnotes and quotations in excess of three (3) lines may be single-spaced. Reproduction of any of these documents may be by any process provided all copies are clear and permanently legible. Electronically filed pleadings or briefs shall be formatted in the same manner as paper filings.

(12) Pleadings and briefs which are not in substantial compliance with this rule, applicable statutes, or commission orders may not be accepted for filing. In addition, filings will be scanned for computer viruses before being uploaded into the commission's electronic

system and may not be accepted if the filing is infected. The secretary of the commission may return these pleadings or briefs with a concise explanation of the deficiencies and the reasons for not accepting them for filing. Tendered filings which have been rejected may not be entered on the commission's docket. The mere fact of filing shall not constitute a waiver of any noncompliance with these rules, and the commission may require amendment of a pleading or entertain appropriate motions in connection with the pleading.

(13) Parties shall be allowed ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.

(14) Any request for expedited treatment shall include the words "Motion for Expedited Treatment" in the title of the pleading. The pleading shall also set out with particularity the following:

(A) The date by which the party desires the commission to act;

(B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and

(C) That the pleading was filed as soon as it could have been or an explanation why it was not.

(15) Unless otherwise provided by these rules or by other law, the party filing a pleading or brief shall serve every other party, including the staff counsel and the public counsel, a copy of the pleading or brief and cover letter. Any party may contact the secretary of the commission for the names and addresses of the parties in a case.

(16) Methods of Service.

(A) Any person entitled by law may serve a document on a represented party by—

1. Delivering it to the party's attorney;
2. Leaving it at the office of the party's attorney with a secretary, clerk, or attorney associated with or employed by the attorney served;
3. Mailing it to the last known address of the party's attorney;
4. Transmitting it by facsimile machine to the party's attorney; or
5. Transmitting it to the email address of the party's attorney.

(B) Any person entitled by law may serve a document on an unrepresented party by—

1. Delivering it to the party; or

2. Mailing it to the party's last known address.

(C) Completion of Service.

1. Service by mail is complete upon mailing.

2. Service by facsimile transmission is complete upon actual receipt.

3. Service by email is complete upon actual receipt.

(17) Every pleading or brief shall include a certificate of service. Such certificate of service shall be adequate proof of service.

(18) Any pleading may be amended within ten (10) days of filing, unless a responsive pleading has already been filed, or at any time by leave of the commission. Parties shall be allowed ten (10) days from the date of filing in which to respond to an amended pleading unless otherwise ordered by the commission.

(19) Any list of issues ordered by the commission must set out each question presented for decision. Each question presented should be clear and concise.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed May 15, 1980, effective Sept. 12, 1980. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Sept. 11, 2001, effective April 30, 2002. Amended: Filed May 21, 2002, effective Dec. 30, 2002. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.085 Protective Orders (Rescinded October 30, 2011)

AUTHORITY: section 386.410, RSMo Supp. 1998. Original rule filed Aug. 24, 1999, effective April 30, 2000. Rescinded: Filed March 2, 2011, effective Oct. 30, 2011.

4 CSR 240-2.090 Discovery and Prehearings

PURPOSE: This rule prescribes the procedures for depositions, written interrogatories, data requests, and prehearing conferences.



(1) Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure.

(2) Parties may use data requests as a means for discovery.

(A) Data request means an informal written request for documents or information that may be transmitted directly between attorneys, agents, or employees of the commission, public counsel, or other parties.

(B) Answers to data requests need not be under oath or be in any particular format, but shall be signed by a person who is able to attest to the truthfulness and correctness of the answers.

(C) The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed to by the parties to the data requests, or otherwise ordered by the commission.

(D) If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient shall serve all of the objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests, unless otherwise ordered by the commission.

(E) If the recipient asserts an inability to answer the data requests within the twenty (20)-day time limit, the recipient shall include the date it will be able to answer the data requests simultaneously with its reasons for its inability to answer.

(F) The responding party shall promptly notify the requesting party of any changes to the answers previously given to a data request.

(G) Upon agreement by the parties or as ordered by the commission for good cause shown, the time limits for serving or answering data requests may be modified.

(H) Any data request issued to or by the staff of the commission shall be submitted and responded to in the commission's Electronic Filing and Information System (EFIS). However, if the technical limitations of EFIS make such submission or response difficult, the parties to the data requests may agree upon an alternative method of submission and response, or an alternative method of submission and response may be ordered by the commission.

(I) Sanctions for failure to answer data requests may include any of those provided for abuse of the discovery process in section (1) of this rule.

(3) All prehearing conferences shall be held as directed by the commission or presiding officer, and reasonable notice of the prehearing conference time shall be given to the parties involved.

(4) Any party may petition the commission to hold a prehearing conference at any time prior to the hearing.

(5) Failure to appear at a prehearing conference without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown.

(6) Parties may consider procedural and substantive matters at the prehearing conference which may aid in the disposition of the issues. Matters which require a decision may be presented to the presiding officer during the conference.

(7) Facts disclosed in the course of a prehearing conference and settlement offers are privileged and, except by agreement, shall not be used against participating parties unless fully substantiated by other evidence.

(8) Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion; and

(B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Jan. 22, 2014, effective Aug. 30, 2014.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.100 Subpoenas

PURPOSE: The commission may issue subpoenas for the production of witnesses and records. This rule prescribes the procedures for requesting and issuing subpoenas.

(1) A request for a subpoena or a subpoena *duces tecum* requiring a person to appear and testify at the taking of a deposition or at a hearing, or for production of documents or records shall be filed on the form provided by the commission and shall be directed to the secretary of the commission. A request for a subpoena *duces tecum* shall specify the particular document or record to be produced, and shall state the reasons why the production is believed to be material and relevant.

(2) Except for a showing of good cause, a subpoena or subpoena *duces tecum* shall not be issued fewer than twenty (20) days before a hearing.

(3) Objections to a subpoena or subpoena *duces tecum* or motions to quash a subpoena or subpoena *duces tecum* shall be made within ten (10) days from the date the subpoena or subpoena *duces tecum* is served.

(4) Subpoenas or subpoenas *duces tecum* shall be signed and issued by the secretary of the commission, a commissioner or by a law judge pursuant to statutory delegation authority. The name and address of the witness shall be inserted in the original subpoena or subpoena *duces tecum* and a copy of the return shall be filed with the secretary of the commission. Subpoenas or subpoenas *duces tecum* shall show at whose instance the subpoena or subpoena *duces tecum* is issued. Blank subpoenas shall not be issued.

(5) If there is a failure to comply with a subpoena or a subpoena *duces tecum* after objections or a motion to quash have been determined by the commission, the commission by its counsel or the party seeking enforcement may apply to a judge of the circuit court of the county in which—the hearing has been held, is being held, or is scheduled to be held, or where the witness resides or may be found—for an order enforcing the subpoena or subpoena *duces tecum*.

AUTHORITY: section 386.410, RSMo Supp. 1998. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded*



and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.

*Original authority: 386.410, RSMo 1939 amended 1947, 1977, 1996.

4 CSR 240-2.110 Hearings

PURPOSE: This rule prescribes the procedures for the setting, notices, and conduct of hearings.

(1) The commission shall set the time and place for all hearings and serve notice as required by law. Additional notice may be served when the commission deems it to be appropriate.

(2) The presiding officer may order continuance of a hearing date for good cause.

(A) When a continuance has been granted at the request of the applicant or complainant, the commission may dismiss the case for failure to prosecute if it has not received a request from the applicant or complainant that the matter be again continued or set for hearing within ninety (90) days from the date of the order granting the continuance.

(B) Failure to appear at a hearing without previously having secured a continuance shall constitute grounds for dismissal of the party or the party's complaint, application or other action unless good cause for the failure to appear is shown.

(3) When pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all the matters at issue, and may make other orders concerning cases before it to avoid unnecessary costs or delay.

(4) The presiding officer shall establish a procedural schedule through one (1) or more procedural orders in which the hearing and conference dates are set, date for filing testimony and pleadings are set, and any other applicable procedural parameters are established as determined necessary by the presiding officer or agreed to by the parties.

(5) The order of procedure in hearings shall be as follows, unless otherwise agreed to by the parties or ordered by the presiding officer:

(A) In all cases except investigation cases, the applicant or complainant shall open and close, with intervenors following the staff counsel, or his designee, and the public counsel in introducing evidence; and

(B) In investigation cases, the staff counsel, or his designee, shall open and close.

(6) A reporter appointed by the commission shall make a full and complete record of the entire proceeding in any formal hearing, or of any other hearing or proceeding at which the commission determines reporting is appropriate.

(7) Suggested corrections to the transcript of record shall be offered within ten (10) days after the transcript is filed, except for good cause shown. The suggestions shall be in writing and shall be filed in the official commission file. Objections to proposed corrections shall be made in writing within ten (10) days after the filing of the suggestions. The commission shall determine what changes, if any, shall be made in the record after a review of the suggested corrections and any objections.

(8) A party may request that the commission reopen the record for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing a motion to reopen the record for the taking of additional evidence. The motion shall assert the justification for taking additional evidence including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

AUTHORITY: section 386.410, RSMo 2000.* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed Sept. 6, 1985, effective Dec. 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-2.115 Stipulations and Agreements

PURPOSE: This rule prescribes the procedure when a nonunanimous stipulation and agreement is presented to the commission.

(1) Stipulations and Agreements.

(A) The parties may at any time file a stipulation and agreement as a proposed resolu-

tion of all or any part of a contested case. A stipulation and agreement shall be filed as a pleading.

(B) The commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.

(2) Nonunanimous Stipulations and Agreements.

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

(E) A party may indicate that it does not oppose all or part of a nonunanimous stipulation and agreement.

AUTHORITY: section 386.410, RSMo 2000.* Original rule filed June 9, 1987, effective Sept. 15, 1987. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002, effective Nov. 30, 2002.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-2.116 Dismissal

PURPOSE: This rule prescribes the conditions under which the commission or an initiating party may dismiss a case or by which any party may be dismissed.

(1) An applicant or complainant may voluntarily dismiss an application or complaint without an order of the commission at any time before prepared testimony has been filed or oral evidence has been offered by filing a notice of dismissal with the commission. Once evidence has been offered or prepared testimony filed, an applicant or complainant may dismiss an action only by leave of the commission, or by written consent of all the



parties.

(2) Cases may be dismissed for lack of prosecution if no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time.

(3) A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.

(4) A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved.

AUTHORITY: section 386.410, RSMo 2000.* Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-2.117 Summary Disposition

PURPOSE: This rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.

(1) Summary Determination.

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for sum-

mary determination upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than thirty (30) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

(G) The commission may hear oral argument on a motion for summary determination.

(2) Determination on the Pleadings—Except in a case seeking a rate increase or which is subject to an operation of law date, the commission may, on its own motion or on the motion of any party, dispose of all or any part of a case on the pleadings whenever such disposition is not otherwise contrary to law or contrary to the public interest.

AUTHORITY: section 386.410, RSMo 2000.* Original rule filed March 26, 2002, effective Nov. 30, 2002.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-2.120 Presiding Officers

PURPOSE: This rule states the duties of presiding officers and the procedure for disqualifying them.

(1) A presiding officer shall have the duty to conduct full, fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of cases, to maintain order, and shall possess all powers necessary to that end. The presiding officer may take action as may be necessary and appropriate to the discharge of duties, consistent with the statutory authority or other authorities under which the commission functions and with the rules and policies of the commission.

(2) Whenever any party shall deem the presiding officer for any reason to be disqualified to preside, or to continue to preside, in a particular case, the party may file with the secretary of the commission a motion to disqualify with affidavits setting forth the grounds alleged for disqualification. A copy of the motion shall be served by the commission on the presiding officer whose removal is sought and the presiding officer shall have seven (7) days from the date of service within which to reply.

AUTHORITY: section 386.410, RSMo Supp. 1998.* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

Union Electric Co. v. PSC, 591 SW2d 134 (Mo. App. 1979). Prohibition will be under common law rule to disqualify a PSC commissioner who was a party in a case now pending before her.

4 CSR 240-2.125 Procedures for Alternative Dispute Resolution

PURPOSE: This rule establishes procedures which will allow parties to utilize alternative dispute resolution methods in order to resolve issues or the entire matter in dispute.

**(1) Settlement Negotiations.**

(A) When the parties agree that the participation of a presiding officer in the settlement process would be beneficial, those parties shall file a motion for appointment of a settlement officer for that case. The motion shall contain—

1. A statement that all parties agree to the procedure;

2. A list of the issues to be addressed or matters the parties wish the presiding officer to aid them in resolving; and

3. A date by which a settlement will be reached or settlement negotiations under this procedure will end.

(B) If the commission grants the motion for a settlement officer, it shall issue an order scheduling a settlement conference and shall appoint a presiding officer to participate in settlement negotiations.

(C) The negotiations and statements of the parties or attorneys made at the settlement conference shall be off the record and shall not be made a part of the official case.

(D) If a settlement is not reached before the date specified by the parties in their motion, the procedure shall end unless the parties all agree to an extension and the procedure is extended by order of the commission.

(2) Mediation.

(A) The commission may order mediation before any further proceeding in a case.

(B) As the commission deems appropriate, or upon a request for mediation, the commission may appoint a presiding officer or other neutral third party other than the presiding officer assigned to the case to mediate the dispute.

(C) All other actions on the case shall cease and all time limitations shall be tolled pending the completion of mediation process, except as otherwise provided by law.

(D) The mediator shall be disqualified from conducting an evidentiary hearing relating to that particular case and shall not make any communication regarding the settlement or mediation discussions in the case to any commissioner or the presiding officer appointed to preside over the case.

(E) Failure to appear and participate in good faith in commission ordered mediation shall be grounds for sanctions including dismissal or default of the noncompliant party.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.130 Evidence

PURPOSE: This rule prescribes the rules of evidence in any hearing before the commission.

(1) In any hearing, these rules supplement section 536.070, RSMo.

(2) If any information contained in a document on file as a public record with the commission is offered in evidence, the document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may be received in evidence by reference, provided that the particular portions of the document shall be specifically identified and are relevant and material. The information may be assigned an exhibit number for identification.

(3) The presiding officer shall rule on the admissibility of all evidence. Evidence to which an objection is sustained, at the request of the party seeking to introduce the same or at the instance of the commission, nevertheless may be heard and preserved in the record, together with any cross-examination with respect to the evidence and any rebuttal of the evidence, unless it is wholly irrelevant, repetitious, privileged or unduly long. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings shall be unnecessary and need not be taken.

(4) In extraordinary circumstances where prompt decision by the commission is necessary to promote substantial justice, the presiding officer may refer a matter to the commission for determination during the progress of the hearing.

(5) The rules of privilege are effective to the same extent that they are in civil actions.

(6) Format for Prepared Testimony.

(A) It shall be typed or printed, in black type on a white page that is eight and one-half inches by eleven inches (8 1/2" × 11").

(B) It shall be double-spaced and have pages numbered consecutively at the bottom right-hand corner or bottom center beginning with the first page as page 1.

(C) If not filed electronically, it shall be filed unfolded and stapled together at the top left-hand margin or bound at an edge in booklet form.

(D) It shall have at least a one-inch (1") margin on the top, bottom, and both sides.

(E) Schedules shall bear the word "schedule," and the number of the schedule shall be typed in the lower right-hand margin of the

first page of the schedule.

(F) All prepared testimony and other exhibits and schedules shall contain the following information in the following format on the upper right-hand corner of a cover sheet:

Exhibit No.: (To be marked by the hearing reporter)
Issue: (If known at the time of filing)
Witness: (Full name of witness)
Type of Exhibit: (Specify whether direct, rebuttal, or other type of exhibit)

Sponsoring Party:

Case No.:

Date Testimony Prepared:

(G) It shall be filed on line-numbered pages.

(H) Testimony that addresses more than one (1) issue shall contain a table of contents.

(I) Electronically filed prepared testimony shall be formatted and labeled in the same manner as paper filings.

(J) Printing on both sides of the page is encouraged.

(7) For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.

(8) Except as set out in this section, the prepared testimony of each witness shall be filed separately and shall be accompanied by an affidavit providing the witness's oath. In lieu of prepared direct testimony, any party may file a report that presents in narrative form, and with complete and comprehensive detail, the analysis and conclusions of one (1) or more expert witness(es) and the facts and information on which they relied. In any report, the contributing expert witnesses shall be listed together with an indication of the portion or portions of the report to which each contributed. The qualifications of each contributing expert witness shall be attached to the report as a schedule. Any such report shall comply with the commission's requirements in sections (6) and (7).



(9) In any case, the commission or presiding officer may direct that testimony be taken live rather than prepared in advance.

(10) No party shall be permitted to supplement prefiled prepared direct, rebuttal, or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

(11) Any or all parties may file a stipulation as to the facts. This stipulation shall not preclude the offering of additional evidence by any party except as specified in the stipulation.

(12) Exhibits shall be legible and, unless otherwise authorized by the commission, shall be prepared on a standard eight and one-half by eleven inch (8 1/2" × 11")-size page. The pages of each exhibit shall be numbered and rate comparisons and other figures shall be set forth in tabular form.

(13) Exhibits shall be tendered to the reporter at the time of hearing without being prenumbered by the offering party, unless otherwise ordered by the presiding officer.

(14) All exhibits shall be marked at the time of hearing, using a single series of numbers, unless otherwise ordered by the presiding officer.

(15) Unless the presiding officer directs otherwise, when exhibits that have not previously been filed are offered in evidence, the original shall be furnished to the reporter, and the party offering exhibits also shall be prepared to furnish a copy to each commissioner, the presiding officer, and each party.

(16) The presiding officer may require the production of further evidence upon any issue. The presiding officer may authorize the filing of specific evidence as a part of the record within a fixed time after submission, reserving exhibit numbers, and setting other conditions for such production.

(17) Unless otherwise ordered, any objection to the admission of a post-hearing exhibit must be filed within ten (10) days of the date the exhibit was filed.

(18) Evidence for which a claim of confidentiality is made shall be provided in confor-

mance with 4 CSR 240-2.135 or with any protective order specific to that information.

(19) All testimony shall be taken under oath.

*AUTHORITY: section 386.410, RSMo 2000. * Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 6, 1981, effective Feb. 15, 1982. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Amended: Filed Feb. 23, 1990, effective May 24, 1990. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Sept. 11, 2001, effective April 30, 2002. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.*

State ex rel. Utility Consumers Council v. Public Service Commission, 562 S.W.2d 688 (Mo. App. 1978). At a hearing on the issuance of a certificate of convenience and necessity, the commission denied appellant consumers council opportunity to cross-examine electric utility's witnesses on certain testimony regarding costs. The proprietary nature of the cost information involved does not protect it from cross-examination by consumers council, and denial of right to such cross-examination was improper.

4 CSR 240-2.135 Confidential Information

PURPOSE: This rule prescribes the procedures for handling confidential information in cases before the commission.

(1) The commission recognizes two (2) levels of protection for information that should not be made public.

(A) Proprietary information is information concerning trade secrets, as well as confidential or private technical, financial, and business information.

(B) Highly confidential information is information concerning—

1. Material or documents that contain information relating directly to specific customers;

2. Employee-sensitive personnel information;

3. Marketing analysis or other market-specific information relating to services offered in competition with others;

4. Marketing analysis or other market-specific information relating to goods or services purchased or acquired for use by a com-

pany in providing services to customers;

5. Reports, work papers, or other documentation related to work produced by internal or external auditors or consultants;

6. Strategies employed, to be employed, or under consideration in contract negotiations; and

7. Information relating to the security of a company's facilities.

(2) Protective Order. In addition to discovery and testimony which may be designated as highly confidential or proprietary without a protective order from the commission as set out in this rule, any person may seek an order protecting information from disclosure by the commission. A request for a protective order shall be made as follows:

(A) By filing a separate pleading denominated "Motion for Protective Order";

(B) The pleading shall state with particularity why the moving party seeks protection and what harm may occur if the information is made public;

(C) The pleading shall also state whether any of the information for which a claim of confidentiality is made can be found in any other open public document;

(D) The information provided to the commission may be designated as highly confidential or proprietary while the motion is pending;

(E) Any information designated as highly confidential or proprietary shall be provided in a redacted public version and a complete confidential version the same as for testimony as set out in section (11) of this rule; and

(F) If the motion is granted, the information shall be protected from disclosure as set out in sections (3)–(22) of this rule.

(3) When a party seeks discovery of information that the party from whom discovery is sought believes to be confidential, the party from whom discovery is sought may designate the information as proprietary or highly confidential.

(A) No order from the commission is necessary before a party in any case pending before the commission may designate material as proprietary or highly confidential and such information shall be protected as provided in this rule.

(B) The party that designates information as proprietary or highly confidential must inform, in writing, the party seeking discovery of the reason for the designation at the same time it responds to the discovery request. If the party seeking discovery disagrees with the designation placed on the information, it must utilize the informal discovery dispute resolution procedures set forth



at 4 CSR 240-2.090(8). If the party seeking discovery continues to disagree with the designation placed on the information, it may file a motion challenging the designation.

(C) This rule does not require the disclosure of any information that would be protected from disclosure by any privilege, rule of the commission, or the Missouri Rules of Civil Procedure.

(4) Proprietary information may be disclosed only to the attorneys of record for a party and to employees of a party who are working as subject-matter experts for those attorneys or who intend to file testimony in that case, or to persons designated by a party as an outside expert in that case.

(A) The party disclosing information designated as proprietary shall serve the information on the attorney for the requesting party.

(B) If a party wants any employee or outside expert to review proprietary information, the party must identify that person to the disclosing party by name, title, and job classification before disclosure. Furthermore, the person to whom the information is to be disclosed must comply with the certification requirements of section (7) of this rule.

(C) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as proprietary.

(5) Highly confidential information may be disclosed only to the attorneys of record, or to outside experts that have been retained for the purpose of the case.

(A) Employees, officers, or directors of any of the parties in a proceeding, or any affiliate of any party, may not be outside experts for purposes of this rule.

(B) The party disclosing highly confidential information may, at its option, make such information available only on the furnishing party's premises, unless the discovering party can show good cause for the disclosure of the information off-premises.

(C) The person reviewing highly confidential information may not make copies of the documents containing the information and may make only limited notes about the information. Any such notes must also be treated as highly confidential.

(D) If a party wants an outside expert to review highly confidential information, the party must identify that person to the disclosing party before disclosure. Furthermore, the outside expert to whom the information is to be disclosed must comply with the certification requirements of section (7) of this rule.

(E) Subject to subsection (5)(B), the party

disclosing information designated as highly confidential shall serve the information on the attorney for the requesting party.

(F) A customer of a utility may view his or her own customer-specific information, even if that information is otherwise designated as highly confidential.

(6) If any party believes that information must be protected from disclosure more rigorously than would be provided by a highly confidential designation, it may file a motion explaining what information must be protected, the harm to the disclosing entity or the public that might result from disclosure of the information, and an explanation of how the information may be disclosed to the parties that require the information while protecting the interests of the disclosing entity and the public.

(7) Any employee of a party that wishes to review proprietary information, or any outside expert retained by a party that wishes to review highly confidential or proprietary information must first certify in writing that he or she will comply with the requirements of this rule.

(A) The certification must include the signatory's full name, permanent address, title or position, date signed, the case number of the case for which the signatory will view the information, and the identity of the party for whom the signatory is acting.

(B) The signed certificate shall be filed in the case.

(C) The party seeking disclosure of the highly confidential or proprietary information must provide a copy of the certificate to the disclosing party before disclosure is made.

(8) Attorneys possessing proprietary or highly confidential information or testimony may make such information or testimony available only to those persons authorized to review such information or testimony under the restrictions established in sections (4) and (5).

(9) If information to be disclosed in response to a discovery request is information concerning another entity—whether or not a party to the case—which the other entity has indicated is confidential, the disclosing party must notify the other entity of its intent to disclose the information. If the other entity informs the disclosing party that it wishes to protect the material or information, the disclosing party must designate the material or information as proprietary or highly confidential under the provisions of this rule.

(10) Any party may use proprietary or highly confidential information in prefiled testimony, in a pleading, or at hearing, if the same level of confidentiality assigned by the disclosing party, or the commission, is maintained. Before including nonpublic information that it has obtained outside this proceeding in its pleading or testimony, a party must ascertain from the source of the information whether that information is claimed to be proprietary or highly confidential.

(11) A party may designate portions of prefiled or live testimony as proprietary or highly confidential. Prefiled testimony that contains information designated as proprietary or highly confidential must be filed as follows:

(A) A public version of the prefiled testimony must be filed along with the proprietary or highly confidential version of the testimony. For the public version, the proprietary or highly confidential portions must be obliterated or removed. The proprietary pages must be marked "P" and the removal of proprietary information shall be indicated by one (1) asterisk before and after the information, e.g., *proprietary information removed*. The highly confidential pages must be marked "HC" with the removal of highly confidential information indicated by underlining and two (2) asterisks before and after the highly confidential information, e.g., **highly confidential information removed**. The designated information must be removed with blank spaces remaining so that the lineation and pagination of the public version remains the same as the highly confidential and proprietary versions;

(B) For the nonpublic version of the prefiled testimony, the proprietary pages must be marked "P" and the proprietary information indicated by one (1) asterisk before and after the information, e.g., *Proprietary*. The highly confidential pages shall be stamped "HC" with the highly confidential information indicated by underlining and by two (2) asterisks before and after the highly confidential information, e.g., **Highly Confidential**;

(C) At the hearing, the party offering the prefiled testimony must present a public version of the testimony in which the proprietary or highly confidential portions are obliterated or removed. The public version of the testimony will be marked as Exhibit _____. The offering party must also present a separate copy of the prefiled testimony containing proprietary or highly confidential information, sealed in an envelope. The version of the testimony containing proprietary or highly confidential information will be marked as



Exhibit ___ P or HC, as appropriate.

(12) Not later than ten (10) days after testimony is filed that contains information designated as proprietary or highly confidential, any party that wishes to challenge the designation of the testimony may file an appropriate motion with the commission.

(A) If the designation of the testimony is challenged, the party asserting that the information is proprietary or highly confidential must, not later than ten (10) days, unless a shorter time is ordered, file a pleading establishing the specific nature of the information that it seeks to protect and establishing the harm that may occur if that information is disclosed to the public.

(B) If the asserting party fails to file the pleading required by this section, the commission may order that the designated information be treated as public information.

(13) If a response to a discovery request requires the duplication of material that is so voluminous, or of such a nature that copying would be unduly burdensome, the furnishing party may require that the material be reviewed on its own premises, or at some other location, within the state of Missouri.

(14) If prefiled testimony includes information that has previously been designated as highly confidential or proprietary in another witness's prefiled testimony, that information must again be designated as highly confidential or proprietary.

(15) All live testimony, including cross-examination and oral argument, which reveals information that is designated as proprietary or highly confidential may be offered only after the hearing room is cleared of all persons except those persons to whom the highly confidential or proprietary information is available under this rule. The transcript of such live testimony or oral argument will be kept under seal and copies will be provided only to the commission and the attorneys of record. The contents of such transcripts may not be disclosed to anyone other than those permitted access to the designated information under this rule.

(16) Proprietary or highly confidential information may not be quoted in briefs or other pleadings unless those portions of the briefs or other pleading are also treated as proprietary or highly confidential.

(17) All persons who have access to information under this rule must keep the information secure and may neither use nor disclose such information for any purpose other than prepa-

ration for and conduct of the proceeding for which the information was provided. This rule shall not prevent the commission's staff or the Office of the Public Counsel from using highly confidential or proprietary information obtained under this rule as the basis for additional investigations or complaints against any utility company.

(18) After receiving an appropriate writ of review, the commission will deliver proprietary and highly confidential testimony constituting part of the record before the commission to the reviewing court under seal, unless otherwise directed by the court.

(19) Within ninety (90) days after the completion of the proceeding, including judicial review, all copies of all proprietary and highly confidential information, testimony, exhibits, transcripts, or briefs in the possession of any party must be returned to the party claiming a confidential interest in such information if that party requests that the information be returned. Otherwise, the information must be destroyed by the party possessing such information. Any notes pertaining to such information must be destroyed.

(20) The provisions of sections (4), (5), (7), (8), and (19) of this rule do not apply to officers or employees of the commission or to the public counsel or employees of the Office of the Public Counsel. The officers or employees of the commission and the public counsel and employees of the Office of the Public Counsel are subject to the nondisclosure provisions of section 386.480, RSMo. Neither the officers or employees of the commission, nor the public counsel and the employees of the Office of the Public Counsel shall use or disclose any information obtained in discovery for any purpose other than in the performance of their duties.

(21) Outside experts of the staff of the commission or the Office of the Public Counsel who have been contracted to be witnesses in the proceeding have access to designated information and testimony on the same basis as the staff of the commission and the Office of the Public Counsel except that the outside expert must comply with the provisions of sections (7) and (19). Outside experts of the staff of the commission and the Office of the Public Counsel who have not been contracted to be witnesses in the proceeding are subject to all provisions of this rule.

(22) A claim that information is proprietary or highly confidential is a representation to the commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, proprietary or highly confidential.

(23) The commission may waive or grant a variance from any provision of this rule for good cause shown.

AUTHORITY: sections 386.040 and 386.410, RSMo 2000. Original rule filed May 25, 2006, effective Jan. 30, 2007. Amended: Filed March 2, 2011, effective Oct. 30, 2011.*

**Original authority: 386.080, RSMo 1939 and 386.410, RSMo 1939, amended 1947, 1977, 1996.*

4 CSR 240-2.140 Briefs and Oral Arguments

PURPOSE: This rule sets forth the procedures for filing briefs and presenting oral arguments in any hearing.

(1) In any case, the commission or presiding officer shall determine whether the parties may file briefs or present oral argument, or both, and may establish time and page limits.

(2) Unless otherwise ordered by the commission or presiding officer, initial post-hearing briefs shall be filed no later than twenty (20) days after the date on which the complete transcript of the hearing is filed.

(3) Unless otherwise ordered by the commission or presiding officer, the parties shall have ten (10) days after the filing of the initial briefs to file their reply briefs.

(4) Unless otherwise ordered by the commission or presiding officer, the time allowed for oral argument shall be—

(A) For an applicant or complainant, thirty (30) minutes, which may be divided between the initial argument and reply argument, but no more than one-third (1/3) of the time shall be consumed by the reply argument; and

(B) For all other parties, a total of fifteen (15) minutes each.

(5) Unless otherwise ordered by the commission or presiding officer, the parties may file pre-hearing briefs, statements of position, and proposed findings of fact and conclusions of law.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and*



readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-2.150 Decisions of the Commission

PURPOSE: This rule prescribes the method of issuing commission orders and the effective date of such orders.

(1) The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.

(2) The commission's orders shall be in writing and shall be issued as soon as practicable after the record has been submitted for consideration.

(3) Every order of the commission shall be served by mailing a certified copy, with postage prepaid, to all parties of record.

(4) The commission may, at its discretion, issue a preliminary order and allow parties to provide responses to the preliminary order. The commission may then issue its order after reviewing the responses of the parties.

(5) As technology permits, and where the parties have provided their electronic mail address, the commission will attempt to issue an electronic copy of each order.

AUTHORITY: section 386.410, RSMo Supp. 1998.* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed June 9, 1987, effective Nov. 12, 1987. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

Am. Petrol. Exchange v. Public Service Commission, 172 SW2d 952, transferred 238 Mo. App. 92, 176 SW2d 533 (Mo. 1943). Commission has no power to declare or enforce any principle of law or equity. Commission cannot determine damages, award pecuniary relief or abate a nuisance.

4 CSR 240-2.160 Rehearings and Reconsideration

PURPOSE: This rule prescribes the procedure for requesting a rehearing of a final order or a reconsideration of a procedural or interlocutory order of the commission and the disposition of that request.

(1) Applications for rehearing may be filed pursuant to statute.

(2) Motions for reconsideration of procedural and interlocutory orders may be filed within ten (10) days of the date the order is issued, unless otherwise ordered by the commission. Motions for reconsideration shall set forth specifically the ground(s) on which the applicant considers the order to be unlawful, unjust, or unreasonable. At any time before a final order is issued, the commission may, on its own motion, reconsider, correct, or otherwise amend any order or notice issued in the case.

(3) The filing of a motion for reconsideration shall not excuse any party from complying with any order of the commission, nor operate in any manner to stay or postpone the enforcement of any order, unless otherwise ordered by the commission.

(4) The commission may correct its own orders *nunc pro tunc*.

AUTHORITY: section 386.410, RSMo 2000.* Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

*Original authority: 386.410, RSMo 1939, amended 1947, 1977, 1996.

4 CSR 240-2.170 Forms (Rescinded April 30, 2000)

AUTHORITY: section 386.410, RSMo 1994. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded: Filed Aug. 24, 1999, effective April 30, 2000.

4 CSR 240-2.180 Rulemaking

PURPOSE: This rule provides a procedure for rulemaking, and petitioning for rulemaking, pursuant to Chapter 536, RSMo.

(1) Promulgation, amendment, or rescission of rules may be initiated by the commission through an internally-generated rulemaking case, or pursuant to a rulemaking petition filed with the commission.

(2) Petitions for promulgation, amendment, or rescission of rules shall be filed with the secretary of the commission in writing and shall include:

(A) The name, street address, and mailing address of the petitioner;

(B) One (1) of the following:

1. The full text of the rule sought to be promulgated;

2. The full text of any rule sought to be amended, including the suggested amendments clearly marked; or

3. The full number of any rule sought to be rescinded;

(C) A statement of petitioner's reasons in support of the promulgation, amendment, or rescission of the rule, including a statement of all facts pertinent to petitioner's interest in the matter;

(D) Citations of legal authority which authorize, support, or require the rulemaking action requested by the petition;

(E) An estimation of the effect of the rulemaking on private persons or entities with respect to required expenditures of money or reductions in income, sufficient to form the basis of a fiscal note as required under Chapter 536, RSMo; and

(F) A verification of the petition by the petitioner by oath.

(3) The commission shall either deny the petition in writing, stating the reasons for its decision, or shall initiate rulemaking in accordance with Chapter 536, RSMo.

(4) The commission shall comply with the notice provisions of section 536.041, RSMo, upon the disposal of any rulemaking petition.

(5) When the commission decides to promulgate, amend, or rescind a rule, it shall comply with the requirements for rulemaking in Chapter 536, RSMo.

(6) Persons filing written comments or testifying or commenting at the hearing need not be represented by counsel, but may be represented if they choose.



(7) Hearings on rulemakings may be for commissioner questions or for the taking of initial or reply comments.

(8) Hearings for the taking of initial or reply comments on rulemakings shall proceed as follows:

(A) A commissioner or presiding officer shall conduct the hearing, which shall be transcribed by a reporter;

(B) Neither written nor oral comments need to be sworn, but testimony shall be taken under oath or affirmation;

(C) Persons testifying or commenting at a hearing may give a statement in support of or in opposition to a proposed rulemaking. The commissioners or the presiding officer may question those persons testifying or commenting;

(D) Statements shall first be taken from those supporting a proposed rule, followed by statements from those opposing the rule, unless otherwise directed by the presiding officer;

(E) Persons testifying or commenting may offer exhibits in support of their positions; and

(F) The commission may, at the hearing, hold the hearing open for a specified period if it determines extension is reasonably necessary to elicit material information.

(9) In compliance with the requirements of Chapter 536, RSMo, the commission shall either—

(A) Adopt the proposed rule or proposed amendment as set forth in the notice of proposed rulemaking without further change;

(B) Adopt the proposed rule or proposed amendment with further changes;

(C) Adopt the proposed rescission of the existing rule; or

(D) Withdraw the proposed rule.

AUTHORITY: sections 386.040, 386.250, 386.310, 386.410, 392.210, 392.240, 392.280, 392.290, 392.330, 393.140(3), (4), (6), (9), (11), and (12), 393.160, 393.220, 393.240, 393.290, and 394.160, RSMo 2000 and sections 392.200, 392.220, and 393.110, RSMo Supp. 2010. * Original rule filed April 26, 1976, effective Sept. 11, 1976. Amended: Filed Nov. 7, 1984, effective June 15, 1985. Rescinded and readopted: Filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 2, 2011, effective Oct. 30, 2011.

*Original authority: 386.040, RSMo 1939; 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 386.310, RSMo 1939, amended 1979, 1989, 1996; 386.410, RSMo 1939, amended 1947, 1977, 1996; 392.200, RSMo 1939, amended

1987, 1988, 1996; 392.210, RSMo 1939, amended 1984, 1987, 2008; 392.220, RSMo 1939, amended 1987, 1988, 1991, 1993, 1996, 2008; 392.240, RSMo 1939, amended 1987; 392.280, RSMo 1939, amended 1987, 1993; 392.290, RSMo 1939, amended 1986, 1987; 392.330, RSMo 1939, amended 1980, 1987, 1995; 393.110, RSMo 1939, amended 1967, 2003; 393.140, RSMo 1939, amended 1949, 1967; 393.160, RSMo 1939, amended 1949, 1984; 393.220, RSMo 1939, amended 1967, 1980; 393.240, RSMo 1939, amended 1967; 393.290, RSMo 1939, amended 1967; 394.160, RSMo 1939, amended 1979.

State ex rel. Southwestern Bell Telephone Co. v. PSC, 592 SW2d 184 (Mo. App. 1979). A declaratory judgment action under section 536.050, RSMo is not available to challenge the validity of a rule of the Public Service Commission, since a specific, exclusive statutory scheme for review of commission actions is contained in section 386.510, RSMo.

Jefferson Lines, Inc. v. Missouri Public Service Commission, 581 SW2d 124 (Mo. App. 1979). In 4 CSR 240-2.180 the commission provided by rule a method for attack on any of its own rules. A record could be made and if the commission ruled adversely to the petition, an appeal would lie under section 386.510, RSMo. Also, under section 536.031.5, RSMo this court takes judicial notice of the rules printed in the Code of State Regulations.

4 CSR 240-2.190 Hearings Under Rulemaking (Rescinded November 30, 1995)

AUTHORITY: section 386.410, RSMo 1986. Original rule filed Nov. 7, 1984, effective June 15, 1985. Rescinded: Filed March 10, 1995, effective Nov. 30, 1995.

4 CSR 240-2.200 Small Company Rate Increase Procedure (Rescinded April 30, 2003)

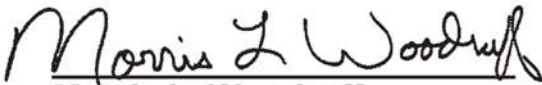
AUTHORITY: section 386.410, RSMo Supp. 1998. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Rescinded: Filed Aug. 16, 2002, effective April 30, 2003.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 7th day of June 2017.


Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

June 7, 2017

File/Case No. WC-2017-0325

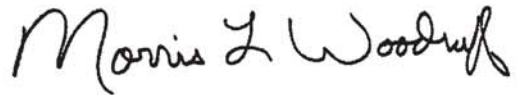
**Missouri Public Service
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Staff Counsel Department
200 Madison Street, Suite 800
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Office of the Public Counsel
Hampton Williams
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Willows Utility Company, The
Legal Department
P.O. Box 140099
Dallas, TX 75214
questions@communitiesinfo.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.



IN THE 31ST JUDICIAL CIRCUIT COURT, GREENE COUNTY, MISSOURI


Judge or Division: JASON R BROWN	Case Number: 1731-CC00313
Plaintiff/Petitioner: STATE OF MISSOURI EX REL ATTORNEY GENERAL JOSHUA D HAWLEY	Plaintiff's/Petitioner's Attorney/Address JOEL RESCHLY PO Box 899 JEFFERSON CITY, MO 65102
Defendant/Respondent: AMERICAN DREAM COMMUNITIES-ALPINE VILLAGE LLC	Court Address: JUDICIAL COURTS FACILITY 1010 N BOONVILLE AVE SPRINGFIELD, MO 65802
Nature of Suit: CC Other Miscellaneous Actions	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: **THE WILLOWS UTILITY COMPANY**
Alias:

REGISTERED AGENT
KENNETH P REYNOLDS
1240 E INDEPENDENCE ST
STE 200
SPRINGFIELD, MO 65804

COURT SEAL OF

GREENE COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

3/10/2017 Date
ME Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:
Subscribed and sworn to before me on _____ (date).
My commission expires: _____ Date _____ Notary Public

Sheriff's Fees

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

STATE OF MISSOURI <i>ex rel.</i>)	
Attorney General Joshua D. Hawley,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
AMERICAN DREAM COMMUNITIES-)	
ALPINE VILLAGE, LLC, and)	
)	
THE WILLOWS UTILITY COMPANY,)	
)	
Defendants.)	

Please Serve:

Kenneth P. Reynolds, Registered Agent for American Dream
Communities-Alpine Village, LLC and The Willows Utility
Company
1240 E. Independence St., Suite 200
Springfield, MO 65804

Petition for Injunctive Relief and Civil Penalties

This case involves violations of the Missouri Clean Water Law and the Missouri Safe Drinking Water Law. The State of Missouri, through its relator, states the following for its causes of action:

Parties

1. Relator Joshua D. Hawley is the duly elected and qualified Attorney General of Missouri. The Attorney General is authorized under § 27.060 RSMo to bring, in the state’s name, all civil proceedings at law or in equity necessary to protect the rights and interests of the state. The Attorney

General is authorized to bring this lawsuit by § 644.076.1 RSMo of the Missouri Clean Water Law and § 640.130.2 RSMo of the Missouri Safe Drinking Water Law.

2. Defendant American Dream Communities–Alpine Village, LLC is a foreign limited liability company formed under the laws of Texas and registered in Missouri with active status.

3. Defendant The Willows Utility Company is a Missouri general for-profit corporation in good standing.

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter pursuant to Article V, § 14 of the Missouri Constitution and § 478.070 RSMo. Venue is proper in this Court pursuant to §§ 508.010.2 and 644.076.1 RSMo, because Greene County is “where the defendants’ principal place of business is located or where the water contaminant or point source is located or was located at the time the violation occurred.”

General Allegations

5. Defendant American Dream Communities–Alpine Village, LLC is the sole owner of Defendant The Willows Utility Company.

6. The Willows Utility Company is a Public Service Commission-regulated sewer utility and public water system.

7. Since at least December 1, 2013, Defendants have owned and operated a wastewater treatment facility (the “Facility”) and a public drinking water system (the “System”). The Facility and the System serve the Alpine Village Mobile Home Park and are located at 7534 West U.S. Highway 60, Republic, Greene County, Missouri (the “Site”). The legal description of the location of the Site is NW¼, NW¼, Section 15, Township 28 North, Range 23 West, Greene County, Missouri.

8. The Missouri Department of Natural Resources (the “Department”) is a state agency created under § 640.010 RSMo to administer the programs relating to environmental control and conservation and to manage the natural resources of the state of Missouri. The Department enforces the Missouri Clean Water Law at Chapter 644 RSMo and the Missouri Safe Drinking Water Law at Chapter 640 RSMo and all regulations duly promulgated under those Chapters.

9. The Department, under the Missouri Clean Water Law, issued Missouri State Operating Permit No. MO-0052281 (“Wastewater Permit”) to Defendants on December 1, 2013, to operate the Facility. A copy of the Wastewater Permit is attached as **Exhibit 1**.

10. The Facility is a “water contaminant source” as that term is defined in § 644.016(25) RSMo.

11. Effluent from the Facility discharges to an unnamed tributary to Pond Creek. Pond Creek and its tributaries are “waters of the state” as defined in § 644.016(27) RSMo.

12. The Department, under the Missouri Safe Drinking Water Law, issued a Permit of Approval for a Community Water System to Dispense Water to the Public, identified as Permit No. MO5048099 (“Drinking Water Permit”), to Defendant The Willows Utility Company on October 16, 2014. A copy of the Drinking Water Permit is attached as **Exhibit 2**.

13. The System provides water for the Alpine Village Mobile Home Park, as well as the Just One More bar, located at 7530 West U.S. Highway 60, Republic, Greene County, Missouri.

14. The System provides water throughout the year to approximately 210 service connections and serves an average of 525 people daily. Exhibit 2 at 2.

15. Counts I through IV allege that Defendants have violated the Missouri Clean Water Law and related rules and permit requirements.

16. Counts V through VIII allege that Defendants have violated the Missouri Safe Drinking Water Law and related rules and permit requirements.

17. The previous paragraphs are incorporated by reference into each of the following counts as though set forth fully below.

COUNT I — Violating the Missouri Clean Water Law

18. Section 644.051.1(1) RSMo makes it “unlawful for any person to cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state.”

19. On or before March 31, 2014, and continuing, Defendants have been in violation of § 644.051.1(1) RSMo by causing and permitting the discharge of contaminated sludge from the Facility in a location where it was reasonably certain to cause pollution to Pond Creek.

20. Sections 644.051.1(2) and 644.076.1 RSMo make it “unlawful for any person to discharge any water contaminants into waters of the state that reduce the quality of such waters below the water quality standards established by the Clean Water Commission.”

21. The water quality standards applicable to all waters of the state are violated when the addition of a water contaminant would prevent the affected waters from meeting specified conditions. 10 CSR 20-7.031(4).

22. On at least April 14, 2014, May 27–29, 2015, and continuing from July 17, 2015, Defendants’ discharge of water contaminants from the Site caused Pond Creek to violate the water quality standards identified in 10 CSR 20-7.031, in violation of §§ 644.051.1(2) and 644.076.1 RSMo.

23. Section 644.076.1 RSMo authorizes injunctive relief and civil penalties of up to \$10,000 per day, or part thereof, a violation of the Missouri Clean Water Law occurs or continues to occur.

COUNT II – Violating Wastewater Permit Requirements

24. Pursuant to § 644.076.1 RSMo, it is unlawful for any person to violate any provisions of a permit issued under the Missouri Clean Water Law.

25. Table A of the Wastewater Permit requires Defendants to submit monthly monitoring reports to the Department. Exhibit 1 at 2.

26. 10 CSR 20-7.015(9)(D) requires all operating permit holders to submit monitoring reports at intervals required by the permit.

27. For the months of October 2014, November 2014, August 2015, September 2015, October 2015, November 2015, December 2015, and January 2016, Defendants failed to submit complete, timely, and accurate discharge monitoring reports.

28. Section 644.051.1(3) RSMo makes it unlawful for any person to violate any pretreatment and toxic material control regulations, or to discharge any water contaminants into any waters of the state which exceed effluent regulations or permit provisions.

29. Between September 15, 2014 and July 23, 2015, the Department issued five notices of violation for failure to comply with effluent limitations,

including 5-Day Biochemical Oxygen Demand (BOD₅), E. coli, Ammonia as Nitrogen, pH, and Total Suspended Solids.

30. Part C, Special Conditions, ¶ 9, of the Wastewater Permit and 10 CSR 20-7.015(9)(G)2.B require Defendants to report any unanticipated bypass to the Department within twenty-four (24) hours after the bypass has occurred, and to submit a written report to the Department within five (5) business days of the time the permittee becomes aware of the circumstances. Exhibit 1 at 4.

31. On May 29, 2015, Defendants violated 10 CSR 20-7.015(9)(G)2 and the Wastewater Permit by failing to report an overflow of wastewater caused by faulty wiring, resulting in the unpermitted bypass of sludge and wastewater.

32. Part C, Special Conditions, ¶ 3, of the Wastewater Permit requires Defendants to clearly mark all wastewater outfalls in the field. Exhibit 1 at 3.

33. Beginning December 1, 2013, and continuing, Defendants violated the Wastewater Permit and § 644.076 RSMo by failing to post a sign marking the location of the Facility's outfall.

34. Section 644.076.1 RSMo authorizes injunctive relief and civil penalties of up to \$10,000 per day, or part thereof, a violation of the Missouri Clean Water Law occurs or continues to occur.

COUNT III – Violating Sewage Pumping Station Regulations

35. 10 CSR 20-8.020(10)(A)3 requires that sewage pumping stations serving subdivisions have at least two pumps or pneumatic ejectors, each of which must be capable of handling the design and maximum flows.

36. Since at least April 14, 2014, Defendants failed to provide at least two pumps at the Facility’s influent lift station.

37. 10 CSR 20-8.020(10)(B)10 requires that all pumping stations have an alarm that will activate in cases of power failure, pump failure, or any cause of high water in the wet well.

38. Since at least April 14, 2014, and continuing until no later than July 21, 2015, Defendants failed to provide a working alarm system for the Facility’s influent lift station.

39. Section 644.076.1 RSMo authorizes injunctive relief and civil penalties of up to \$10,000 per day, or part thereof, a violation of the Missouri Clean Water Law occurs or continues to occur.

COUNT IV – Failing to Submit Annual Wastewater Permit Fees

40. Sections 644.052 and 644.053 RSMo and 10 CSR 20-6.011(1)(A) require all persons who build, erect, alter, replace, operate, use, or maintain wastewater treatment facilities to pay the appropriate fees.

41. Part C, Special Conditions, ¶ 8, of the Wastewater Permit requires Defendants to pay fees associated with the permit pursuant to § 644.055 RSMo. Exhibit 1 at 4.

42. Defendants failed to pay \$3,000.00 in annual permit fees for the Wastewater Permit to the Department for the year 2014, and \$4,000.00 for the year 2015, in violation of 10 CSR 20-6.011(1)(A). Defendants owe \$7,000.00 for those years.

43. In addition to the unpaid annual permit fees, Defendants are “subject to a penalty of the amount of interest accrued on the unpaid fees at the rate of two percent for each month that the fee is delinquent.” Section 644.055 RSMo.

44. Defendants’ unpaid fees have been delinquent for at least 25 months.

COUNT V – Failing to Maintain Minimum Pressure for Public Water

45. Missouri Safe Drinking Water Regulation 10 CSR 60-4.080(9) states that “[p]ublic water systems must maintain a minimum positive pressure of twenty pounds per square inch (20 psi) throughout the distribution system under all normal operating conditions.”

46. Since 2014, the System has filed six low pressure events with the Department’s Southwest Regional Office.

47. The Department learned of numerous other low pressure events from customer complaints.

48. Sections 640.130.2 and 640.130.4 RSMo authorize injunctive relief and civil penalties of up to \$50 per day, or part thereof, for the first violation of the Missouri Safe Drinking Water Law and Regulations, and up to \$100 per day, or part thereof, for all subsequent violations.

COUNT VI – Failing to Provide Proper Public Notice

49. Section 640.130.1 RSMo provides that the Department may issue administrative compliance orders upon a determination that an emergency exists which endangers or could be expected to endanger the public health and safety with regard to drinking water supplies.

50. 10 CSR 60-8.010(2)(A)1 states that “Tier 1 public notice is required for violations or other situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.”

51. The Department issued the Drinking Water — Boil Water Orders Manual in 2008, which requires public water systems to provide Tier 1 public notice to all affected customers in certain situations, including the low pressure events alleged in Count VIII. The Manual is available online at <http://dnr.mo.gov/pubs/pub2300.pdf>.

52. 10 CSR 60-8.010(2)(C)2 requires that “notification shall be provided within twenty-four (24) hours in a form and manner reasonably

calculated to reach all persons served,” and sets forth proper delivery methods, including appropriate broadcast media, conspicuous postings throughout the area, and hand delivery to persons served.

53. Defendants violated 10 CSR 60-8.010(2) by failing to notify all affected customers and by failing to use proper methods of delivery.

54. Sections 640.130.2 and 640.130.4 RSMo authorize injunctive relief and civil penalties of up to \$50 per day, or part thereof, for the first violation of the Missouri Safe Drinking Water Law and Regulations, and up to \$100 per day, or part thereof, for all subsequent violations.

COUNT VII – Failing to Distribute Consumer Confidence Reports

55. 10 CSR 60-8.030(4)(B) requires community water systems to distribute an annual report to their customers containing the following information about the water provided:

- a. The type of water: e.g., surface water, ground water, required by 10 CSR 60-8.030(2)(B)1.A;
- b. The name and location of the source body of water, required by 10 CSR 60-8.030(2)(B)1.B;
- c. The availability of a source water assessment, if one has been completed, and a brief summary of the system’s susceptibility to potential sources of contamination, required by 10 CSR 60-8.030(2)(B)1.C.

56. 10 CSR 60-8.030(1)(C) requires community water systems to distribute the consumer confidence report by July 1 of each year.

57. 10 CSR 60-8.030(4)(G) requires community water systems to mail a copy of the report to the Department by July 1 of each year, and to mail a certification to the Department within three months, certifying that the report was distributed in compliance with regulations.

58. The Department has not received Defendants' 2015 Consumer Confidence Report, in violation of 10 CSR 60-8.030(4)(G).

59. Sections 640.130.2 and 640.130.4 RSMo authorize injunctive relief and civil penalties of up to \$50 per day, or part thereof, for the first violation of the Missouri Safe Drinking Water Law and Regulations, and up to \$100 per day, or part thereof, for all subsequent violations.

COUNT VIII – Failing to Provide an Emergency Drinking Water Operation Plan

60. 10 CSR 60-12.010(2) requires owners or other persons legally responsible for a community water system to develop and implement an emergency water operation plan to assure the provision of water to the persons served by community water systems to the extent possible under emergency conditions.

61. Defendants violated 10 CSR 60-12.010(2) by failing to develop and implement an emergency water operation plan for the System.

62. Sections 640.130.2 and 640.130.4 RSMo authorize injunctive relief and civil penalties of up to \$50 per day, or part thereof, for the first violation of the Missouri Safe Drinking Water Law and Regulations, and up to \$100 per day, or part thereof, for all subsequent violations.

WHEREFORE, the State asks this Court for a Judgment granting the following relief:

A. As to Counts I through III: Issuing a preliminary and permanent injunction ordering Defendants to bring the wastewater treatment facility into compliance with the Missouri Clean Water Law, Chapter 644 RSMo, the regulations duly promulgated thereunder, and the Wastewater Permit and assessing against Defendants a civil penalty in an amount up to \$10,000 per day, for each day or part thereof that Defendants have caused, permitted, or allowed violations of the Missouri Clean Water Law, pursuant to § 644.076.1 RSMo;

B. As to Count IV: Ordering Defendants to pay to the Department the \$7,000.00 in unpaid permit fees, plus a penalty of the amount of interest accrued at the rate of two percent for each month that the fee was delinquent, pursuant to § 644.055 RSMo;

C. As to Counts V through VIII: Issuing a preliminary and permanent injunction ordering Defendants to bring the public drinking water system into compliance with the Missouri Safe Drinking Water Law, Chapter

640 RSMo, the regulations duly promulgated thereunder, and the Drinking Water Permit and assessing against Defendants a civil penalty in an amount up to \$50 per day, for each day or part thereof that Defendants have caused, permitted, or allowed their first violation of the Missouri Safe Drinking Water Law and Regulations, and up to \$100 per day, for each day or part thereof that Defendants have caused, permitted, or allowed all subsequent violations of the Missouri Safe Drinking Water Law and Regulations, pursuant to § 640.130 RSMo;

- D. Assessing costs of these proceedings against Defendants; and
- E. Granting such other relief as may be just and proper.

Respectfully submitted,

JOSHUA D. HAWLEY
Attorney General

/s/ Joel Reschly

Joel Reschly
Assistant Attorney General
Missouri Bar No. 68347
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-8834
Fax: (573) 751-8796
Email: Joel.Reschly@ago.mo.gov
ATTORNEYS FOR PLAINTIFF

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION



MISSOURI STATE OPERATING PERMIT

In compliance with the Missouri Clean Water Law (Chapter 644 R.S. Mo. as amended, hereinafter, the Law), and the Federal Water Pollution Control Act (Public Law 85-92 (Congress) as amended).

Permit No.:	MO-0052281
Facility Name: Address:	American Dream Communities-Alpine Village P.O. Box 2529, Rockwall, TX 75087
Continuing Authority: Address:	Same as above Same as above
Facility Name: Facility Address:	Willows Utility Company WWTF (PSC regulated) 7534 W. US Hwy 60, Republic MO 65738
Legal Description: UTM Coordinates:	NW¼, NW¼, Sec. 15, T28N, R23W, Greene County X= 460750, Y= 4110454
Receiving Stream: First Classified Stream and ID: USGS Basin & Sub-watershed No.:	Unnamed Tributary to Pond Creek (U) Pond Creek (P) (01408) (11010002-0303)

is authorized to discharge from the facility described herein, in accordance with the effluent limitations and monitoring requirements as set forth herein:

FACILITY DESCRIPTION

Outfall #001 – Mobile Home Park– SIC #4952

The use or operation of this facility shall be by or under the supervision of a Certified C Operator
Extended aeration / sand filter / chlorination / dechlorination / sludge holding tank / sludge disposal by contract hauler
Design population equivalent is 926.
Design flow is 100,000 gallons per day.
Actual flow is 50,000 gallons per day.
Design sludge production is 14.8 dry tons/year.

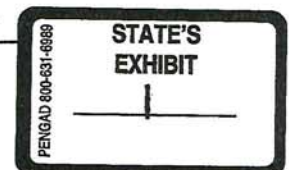
This permit authorizes only wastewater discharges under the Missouri Clean Water Law and the National Pollutant Discharge Elimination System; it does not apply to other regulated areas. This permit may be appealed in accordance with Section 621.250 RSMo, Section 640.013 RSMo and Section 644.051.6 of the Law.

December 1, 2013
Effective Date

Sara Parker Pauley, Director, Department of Natural Resources

June 30, 2016
Expiration Date

John Madros, Director, Water Protection Program



OUTFALL #001	TABLE A. FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS				PAGE NUMBER 2 of 6	
	PERMIT NUMBER MO-0052281					
The permittee is authorized to discharge from outfall(s) with serial number(s) as specified in the application for this permit. The final effluent limitations shall become effective upon issuance and remain in effect until expiration of the permit. Such discharges shall be controlled, limited and monitored by the permittee as specified below:						
EFFLUENT PARAMETER(S)	UNITS	FINAL EFFLUENT LIMITATIONS			MONITORING REQUIREMENTS	
		DAILY MAXIMUM	WEEKLY AVERAGE	MONTHLY AVERAGE	MEASUREMENT FREQUENCY	SAMPLE TYPE
Flow	MGD	*		*	once/week	24 hr. estimate
Biochemical Oxygen Demand ₅	mg/L		15	10	once/month	composite**
Total Suspended Solids	mg/L		20	15	once/month	composite**
<i>E. coli</i> (Note 1, Page 2)	#/100 ml	1030		206	once/month	grab
pH - Units	SU	***		***	once/ month	grab
Ammonia as N (April 1 - Sept 30) (Oct 1 - March 31)	mg/L	5.9 11.9		1.1 2.6	once/ month	grab
Oil & Grease	mg/L	15		10	once/ month	grab
Total Residual Chlorine (Note 2, Page 2)	µg/L	17 (130ML)		8 (130ML)	once/ month	grab
MONITORING REPORTS SHALL BE SUBMITTED <u>MONTHLY</u> ; THE FIRST REPORT IS DUE <u>JANUARY 28, 2014</u> . THERE SHALL BE NO DISCHARGE OF FLOATING SOLIDS OR VISIBLE FOAM IN OTHER THAN TRACE AMOUNTS.						
EFFLUENT PARAMETER(S)	UNITS	DAILY MINIMUM	WEEKLY AVERAGE MINIMUM	MONTHLY AVERAGE MINIMUM	MEASUREMENT FREQUENCY	SAMPLE TYPE
Dissolved Oxygen	mg/L	*		*	once/ month	grab
MONITORING REPORTS SHALL BE SUBMITTED <u>MONTHLY</u> ; THE FIRST REPORT IS DUE <u>JANUARY 28, 2014</u> .						
Whole Effluent Toxicity (WET) test	% Survival	See Special Condition #16			once/permit cycle	24 hr. Composite
<u>WET TEST</u> REPORTS SHALL BE SUBMITTED <u>ONCE / PERMIT CYCLE</u> ; THE FIRST REPORT IS DUE <u>BY JULY 28, 2017</u> .						

* Monitoring requirement only.

** A 24-hour composite sample is composed of 48 aliquots (subsamples) collected at 30 minute intervals by an automatic sampling device.

*** pH is measured in pH units and is not to be averaged. The pH is limited to the range of 6.5-9.0 pH units.

Note 1 - Effluent limitations and monitoring requirements for *E. coli* are applicable only during the recreational season from April 1 through October 31. The Monthly Average Limit for *E. coli* is expressed as a geometric mean.

Note 2 - This permit contains a Total Residual Chlorine (TRC) limit.

- This effluent limit is below the minimum quantification level (ML) of the most common and practical EPA approved CLTRC methods. The department has determined the current acceptable ML for total residual chlorine to be 130 µg/L when using the DPD Colorimetric Method #4500 - CL G. from Standard Methods for the Examination of Waters and Wastewater. The permittee will conduct analyses in accordance with this method, or equivalent, and report actual analytical values. Measured values greater than or equal to the minimum quantification level of 130 µg/L will be considered violations of the permit and values less than the minimum quantification level of 130 µg/L will be considered to be in compliance with the permit limitation. The minimum quantification level does not authorize the discharge of chlorine in excess of the effluent limits stated in the permit.
- Disinfection is required during the recreational season from April 1 through October 31. Do not chlorinate during the non-recreational months.
- Do not chemically de-chlorinate if it is not needed to meet the limits in your permit.
- If no chlorine was used in a given sampling period, an actual analysis is not necessary. Simply report as "0 µg/L" TRC.

B. STANDARD CONDITIONS

In addition to specified conditions stated herein, this permit is subject to the attached Parts I & III standard conditions dated November 1, 2013, and August 15, 1994, and hereby incorporated as though fully set forth herein.

C. SPECIAL CONDITIONS

1. This permit establishes final ammonia limitations based on Missouri's current Water Quality Standard. On August 22, 2013, the Environmental Protection Agency (EPA) published a notice in the Federal Register announcing the final national recommended ambient water quality criteria for protection of aquatic life from the effects of ammonia in freshwater. The EPA's guidance, Final Aquatic Life Ambient Water Quality Criteria for Ammonia – Fresh Water 2013, is not a rule, nor automatically part of a state's water quality standards. States must adopt new ammonia criteria consistent with EPA's published ammonia criteria into their water quality standards that protect the designated uses of the water bodies. The Department of Natural Resources intends to adopt the new ammonia criteria during the next review. Information on this topic can be obtained by viewing the Department's 2013 EPA criteria Factsheet located at <http://dnr.mo.gov/pubs/pub2481.pdf>.
2. This permit may be reopened and modified, or alternatively revoked and reissued, to:
 - (a) Comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a) (2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:
 - (1) contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
 - (2) controls any pollutant not limited in the permit.
 - (b) Incorporate new or modified effluent limitations or other conditions, if the result of a waste load allocation study, toxicity test or other information indicates changes are necessary to assure compliance with Missouri's Water Quality Standards.
 - (c) Incorporate new or modified effluent limitations or other conditions if, as the result of a watershed analysis, a Total Maximum Daily Load (TMDL) limitation is developed for the receiving waters which are currently included in Missouri's list of waters of the state not fully achieving the state's water quality standards, also called the 303(d) list.
 - (d) Incorporate the requirement to develop a pretreatment program pursuant to 40 CFR 403.8(a) when the Director of the Water Protection Program determines that a pretreatment program is necessary due to any new introduction of pollutants into the Publicly Owned Treatment Works or any substantial change in the volume or character of pollutants being introduced.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Clean Water Act then applicable.

3. All outfalls must be clearly marked in the field.
4. Permittee will cease discharge by connection to a facility with an area-wide management plan per 10 CSR 20-6.010(3)(B) within 90 days of notice of its availability.
5. Water Quality Standards
 - (a) To the extent required by law, discharges to waters of the state shall not cause a violation of water quality standards rule under 10 CSR 20-7.031, including both specific and general criteria.
 - (b) General Criteria. The following general water quality criteria shall be applicable to all waters of the state at all times including mixing zones. No water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting the following conditions:
 - (1) Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses;
 - (2) Waters shall be free from oil, scum and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses;
 - (3) Waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses;
 - (4) Waters shall be free from substances or conditions in sufficient amounts to result in toxicity to human, animal or aquatic life;
 - (5) There shall be no significant human health hazard from incidental contact with the water;
 - (6) There shall be no acute toxicity to livestock or wildlife watering;
 - (7) Waters shall be free from physical, chemical or hydrologic changes that would impair the natural biological community;
 - (8) Waters shall be free from used tires, car bodies, appliances, demolition debris, used vehicles or equipment and solid waste as defined in Missouri's Solid Waste Law, section 260.200, RSMo, except as the use of such materials is specifically permitted pursuant to section 260.200-260.247.

C. SPECIAL CONDITIONS (continued)

6. Changes in Discharges of Toxic Substances

The permittee shall notify the Director as soon as it knows or has reason to believe:

- (a) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"
- (1) One hundred micrograms per liter (100 µg/L);
 - (2) Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,5 dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - (3) Five (5) times the maximum concentration value reported for the pollutant in the permit application;
 - (4) The level established by the Director in accordance with 40 CFR 122.44(f).
- (b) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant, which was not reported in the permit application.

7. Report as no-discharge when a discharge does not occur during the report period.
8. It is a violation of the Missouri Clean Water Law to fail to pay fees associated with this permit (644.055 RSMo).
9. Bypasses are not authorized at this facility and are subject to 40 CFR 122.41(m). If a bypass occurs, the permittee shall report in accordance to 40 CFR 122.41(m)(3)(i), and with Standard Condition Part I, Section B, subsection 2.b. Bypasses are to be reported to the Southwest Regional Office.
10. The facility must be sufficiently secured to restrict entry by children, livestock and unauthorized persons as well as to protect the facility from vandalism.
11. At least one gate must be provided to access the wastewater treatment facility and provide for maintenance and mowing. The gate shall remain locked except when opened by the permittee to perform operational monitoring, sampling, maintenance, mowing, or for inspections by the Department.
12. At least one (1) warning sign shall be placed on each side of the facility enclosure in such positions as to be clearly visible from all directions of approach. There shall also be one (1) sign placed for every five hundred feet (500') (150 m) of the perimeter fence. A sign shall also be placed on each gate. Minimum wording shall be SEWAGE TREATMENT FACILITY—KEEP OUT. Signs shall be made of durable materials with characters at least two inches (2") high and shall be securely fastened to the fence, equipment or other suitable locations.
13. An Operation and Maintenance (O & M) manual shall be maintained by the permittee and made available to the operator. The O & M manual shall include key operating procedures and a brief summary of the operation of the facility.
14. An all-weather access road shall be provided to the treatment facility.
15. The discharge from the wastewater treatment facility shall be conveyed to the receiving stream via a closed pipe or a paved or rip-rapped open channel. Sheet or meandering drainage is not acceptable. The outfall sewer shall be protected against the effects of floodwater, ice or other hazards as to reasonably insure its structural stability and freedom from stoppage. The outfall shall be maintained so that a sample of the effluent can be obtained at a point after the final treatment process and before the discharge mixes with the receiving waters.

C. SPECIAL CONDITIONS (continued)

16. Whole Effluent Toxicity (WET) Test shall be conducted as follows:

SUMMARY OF ACUTE WET TESTING FOR THIS PERMIT				
OUTFALL	AEC	FREQUENCY	SAMPLE TYPE	MONTH
001	100%	Once/permit cycle	24 hr. composite*	Any

* A 24-hour composite sample is composed of 48 aliquots (subsamples) collected at 30 minute intervals by an automatic sampler.

Dilution Series						
100% effluent	50% effluent	25% effluent	12.5% effluent	6.25% effluent	(Control) 100% upstream, if available	(Control) 100% Lab Water, also called synthetic water

(a) Test Schedule and Follow-Up Requirements

- (1) Perform a MULTIPLE-dilution acute WET test in the months and at the frequency specified above. For tests which are successfully passed, submit test results using the Department's WET test report form #MO-780-1899 along with complete copies of the test reports as received from the laboratory, including copies of chain-of-custody forms within 30 calendar days of availability to the WATER PROTECTION PROGRAM, P.O. Box 176, Jefferson City, MO 65102. If the effluent passes the test, do not repeat the test until the next test period.
 - (i) Chemical and physical analysis of the upstream control and effluent sample shall occur immediately upon being received by the laboratory, prior to any manipulation of the effluent sample beyond preservation methods consistent with federal guidelines for WET testing that are required to stabilize the sample during shipping.
 - (ii) Any and all chemical or physical analysis of the effluent sample performed in conjunction with the WET test shall be performed at the 100% Effluent concentration in addition to analysis performed upon any other effluent concentration.
 - (iii) All chemical analyses included in the Missouri Department of Natural Resources WET test report form #MO-780-1899 shall be performed and results shall be recorded in the appropriate field of the report form.
- (2) The WET test will be considered a failure if mortality observed in effluent concentrations for either specie, equal to or less than the AEC, is significantly different (at the 95% confidence level; $p = 0.05$) than that observed in the upstream receiving-water control sample. Where upstream receiving water is not available, synthetic laboratory control water may be used.
- (3) All failing test results along with complete copies of the test reports as received from the laboratory, INCLUDING THOSE TESTS CONDUCTED UNDER CONDITION (4) BELOW, shall be reported to the WATER PROTECTION PROGRAM, P.O. Box 176, Jefferson City, MO 65102 within 14 calendar days of the availability of the results.
- (4) If the effluent fails the test for BOTH test species, a multiple dilution test shall be performed for BOTH test species within 30 calendar days and biweekly thereafter (for storm water, tests shall be performed on the next and subsequent storm water discharges as they occur, but not less than 7 days apart) until one of the following conditions are met: Note: Written request regarding single species multiple dilution accelerated testing will be address by THE WATER PROTECTION PROGRAM on a case by case basis.
 - (i) THREE CONSECUTIVE MULTIPLE-DILUTION TESTS PASS. No further tests need to be performed until next regularly scheduled test period.
 - (ii) A TOTAL OF THREE MULTIPLE-DILUTION TESTS FAIL.
- (5) Follow-up tests do not negate an initial failed test.
- (6) The permittee shall submit a summary of all test results for the test series along with complete copies of the test reports as received from the laboratory to the WATER PROTECTION PROGRAM, P.O. Box 176, Jefferson City, MO 65102 within 14 calendar days of the availability of the third failed test.
- (7) Additionally, the following shall apply upon failure of the third follow up MULTIPLE DILUTION test The permittee should contact THE WATER PROTECTION PROGRAM within 14 calendar days from availability of the test results to ascertain as to whether a TIE or TRE is appropriate. If the permittee does not contact THE WATER PROTECTION PROGRAM upon the third follow up test failure, a toxicity identification evaluation (TIE) or toxicity reduction evaluation (TRE) is automatically triggered. The permittee shall submit a plan for conducting a TIE or TRE to the WATER PROTECTION PROGRAM within 60 calendar days of the date of the automatic trigger or DNR's direction to perform either a TIE or TRE. This plan must be approved by DNR before the TIE or TRE is begun. A schedule for completing the TIE or TRE shall be established in the plan approval.

C. SPECIAL CONDITIONS (continued)

- (8) Upon DNR's approval, the TIE/TRE schedule may be modified if toxicity is intermittent during the TIE/TRE investigations. A revised WET test schedule may be established by DNR for this period.
 - (9) If a previously completed TIE has clearly identified the cause of toxicity, additional TIEs will not be required as long as effluent characteristics remain essentially unchanged and the permittee is proceeding according to a DNR approved schedule to complete a TRE and reduce toxicity. Regularly scheduled WET testing as required in the permit, without the follow-up requirements, will be required during this period.
 - (10) When WET test sampling is required to run over one DMR period, each DMR report shall contain a copy of the Department's WET test report form that was generated during the reporting period.
 - (11) Submit a concise summary in tabular format of all WET test results with the annual report.
- (b) Test Conditions
- (1) Test Type: Acute Static non-renewal
 - (2) All tests, including repeat tests for previous failures, shall include both test species listed below unless approved by the department on a case by case basis.
 - (3) Test species: *Ceriodaphnia dubia* and *Pimephales promelas* (fathead minnow). Organisms used in WET testing shall come from cultures reared for the purpose of conducting toxicity tests and cultured in a manner consistent with the most current USEPA guidelines. All test animals shall be cultured as described in the most current edition of Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms.
 - (4) Test period: 48 hours at the "Allowable Effluent Concentration" (AEC) specified above.
 - (5) Upstream receiving stream water shall be used as dilution water. If upstream water is unavailable or if mortality in the upstream water exceeds 10%, "reconstituted" water will be used as dilution water. Procedures for generating reconstituted water will be supplied by the MDNR upon request.
 - (6) Tests will be run with 100% receiving-stream water (if available), collected upstream of the outfall at a point beyond any influence of the effluent, and reconstituted water.
 - (7) If reconstituted-water control mortality for a test species exceeds 10%, the entire test will be rerun.
 - (8) If upstream control mortality exceeds 10%, the entire test will be rerun using reconstituted water as the dilutant.
 - (9) Whole-effluent-toxicity test shall be consistent with the most current edition of Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms



**MISSOURI
DEPARTMENT OF
NATURAL RESOURCES**

PERMIT OF APPROVAL

**FOR A COMMUNITY WATER SYSTEM
TO DISPENSE WATER TO THE PUBLIC**

PERMIT NO. MO5048099

ISSUED TO

The Willows Utility Company

ISSUED IN ACCORDANCE WITH SECTION 640.115

REVISED STATUTES OF MISSOURI AND REGULATIONS (10 CSR 60)

PROMULGATED UNDER SECTION 640.100, RSMo.

This permit applies only to community water systems with approval to dispense water to the public; it does not apply to other environmentally regulated areas.

OCT 16 2014

Date Issued

Steve Sturgess, Chief, Public Drinking Water Branch



I. Description of The Willows Utility Company's Public Water System as of October 8, 2014

A. System Type: Community Public Water System

Community Public Water System: A public water system which serves at least fifteen (15) service connections and is operated on a year-round basis or regularly serves at least twenty-five (25) residents on a year-round basis.

B. Operator Certification Requirements:

Water Treatment System Classification	N/A
Water Distribution System Classification	I

1. All Public Water Systems classified as Community, Non-Transient Non-Community and those Transient Non-Community systems that use surface water or groundwater under the direct influence of surface water are required by 10 CSR 60-14 to hire a Certified Operator with the appropriate certification.
2. Water Treatment System Classifications: A, B, C, or D per Missouri Safe Drinking Water Law and Regulations 10 CSR 60-14.010 Table 1, as determined by the Department.
3. Water Distribution System Classifications: DS I, DS II, or DS III, per Missouri Safe Drinking Water Law and Regulations 10 CSR 60-14.010 Table 2, as determined by the Department.

C. Average Number of Persons Per Day Using System: 525

D. Number and Type of Service Connections: 210

Type of Connection	Meter Type	Count
Residential	Metered	15
Residential	Unmetered	195

E. Sources:

Well Name	Date Constructed	Location	Well ID	Status
Well #1	1970	Lat: 37.1381 Long: -93.4441	WL 14805	Grandfathered Subject to the Conditions Listed in Section L

F. Treatment: Post Hypochlorination

G. Consecutive Connections: None

H. Emergency Sources of Water: None

I. Distribution Treatment Facilities: N/A

J. Type of Storage:

Type of Storage	Total Capacity (gallons)
Standpipe	47,000
TOTAL STORAGE	47,000

K. System Status Dates:

System Dates	
Original Permit to Dispense Issued	January 1, 1970
System Commenced Operation	January 1, 1970
System Activated as a Public Water System	January 1, 1970

L. Special Conditions:

1. If this well develops contamination problems or the public water supply becomes in violation of Missouri's Safe Drinking Water Regulations, the Department shall require the public water system to either:
 - i. Install a Department approved treatment system
 - ii. connect to an approved public water supply or
 - iii. construct a new well according to state standards;
2. Per 10 CSR 23-3.110, if the well falls into such a state of disrepair (such as the pump has been removed or the water line disconnected) that continued use for purposes of obtaining groundwater is impractical and the well has not been in use for a period of two (2) years or more, the division may order that the well be permanently plugged.
3. The well is a grandfathered well and as such may not meet current construction standards for a public water system.
4. All conditions must be disclosed to potential buyers prior to the sale of the property.

M. Staff Recommendations:

On the basis of the review conducted in accordance with the Missouri Safe Drinking Water Law and Regulations 10 CSR 60-3.010, I recommend this Permit to Dispense Water be granted approval.

Kristin Bailey
Kristin Bailey, E. I.
Permits and Engineering Section
Public Drinking Water Branch

10/8/14
DATE

Maher Jaafari
Maher Jaafari, P. E., Chief
Permits and Engineering Section
Public Drinking Water Branch

10/12/14
DATE

II. General Conditions and Requirements

A. Duty to Comply

The Permittee shall comply with all applicable portions of the Safe Drinking Water Act, Missouri Safe Drinking Water Law and Regulations and the Revised Statutes of Missouri, to include all conditions and requirements of this permit. Failure to comply with any portion of this permit constitutes a violation of the Safe Drinking Water Act, Missouri Safe Drinking Water Law and Regulations and/or the Revised Statutes of Missouri and is grounds for enforcement action.

B. Permit Revocation

In accordance with Missouri Safe Drinking Water Law and Regulations the Department may modify or revoke this Permit to Dispense Water to the Public as listed in 10 CSR 60-3.010 (3) (B).

C. Permit Modification

Permit modification will be issued in accordance with Missouri Safe Drinking Water Law and Regulations 10 CSR 60-3.010

The Department may modify this Permit to Dispense Water to the Public at any time to include all newly promulgated requirements of the Safe Drinking Water Act, Missouri Safe Drinking Water Law and Regulations, and the Revised Statutes of Missouri, which are applicable to the public water system, to address requirements necessary to ensure compliance with the laws and regulations pertaining to safe drinking water, and to provide updated information as a result of any future permitted construction.

The Permittee must request a modification of the Permit to Dispense Water to the Public by notifying the Department when major modifications (i.e. additions or changes to the source(s), treatment or storage utilized by the public water supply) to the drinking water system are completed.

D. Transfer of Permit to Dispense Water to the Public

This Permit to Dispense Water to the Public is non-transferable, except with prior approval of the Department. To obtain Department approval of the transfer of this Permit to Dispense Water to the Public, the Permittee shall submit written notification to the Department at least ninety (90) days in advance of the proposed transfer. This notification shall include a Permit to Dispense Drinking Water application form which has been completed by the proposed new owner of the water system and proof of the pending transfer of ownership of the public water system. The proposed new owner must submit a managerial and financial review (as applicable) which illustrates how the system will be managed to insure its long term viability. If the Department approves the transfer, a new Permit to Dispense Water to the Public will be issued to the new owner of the system in accordance with 10 CSR 60-3.020.

E. Appeals

Any person aggrieved by an emergency order or the decision to revoke the Permit to Dispense may appeal within thirty days after the issuance of the order to the circuit court of the county in which the public water system is located or if the public water system is located in more than one county, to the circuit court of any such county. The circuit court shall within ten days after the filing of the appeal hear the cause and determine the same per the Revised Statutes of Missouri section 640.130.5.

F. Annual Fees

The Permittee shall remit payment of the primacy fee, laboratory services and program administration fees to the Department as required by 10 CSR 60 Chapter 16 and the Revised Statutes of Missouri RSMo 640.100, including any penalties or fines as authorized by Missouri Safe Drinking Water Law and Regulations and the Revised Statutes of Missouri.

Failure to remit the laboratory services and program administration fees will result in the Department of Natural Resources and Department of Health laboratory services being terminated for the calendar year and may result in the revocation of the Permit to Dispense Water to the Public.

G. Construction Permits

Construction, extension, alteration or modification of a public water system shall be in accordance with the rules and regulations of the safe drinking water commission. No construction, extension, alteration or modification can begin until written approval is given by the Department based on 10 CSR 60-3.010.

H. Operation and Maintenance

The Permittee shall comply with the operation and maintenance requirements of the Missouri Safe Drinking Water Law and Regulations, the Revised Statutes of Missouri and the Safe Drinking Water Act.

All community, non-transient non-community water systems, and those transient non-community water systems using surface water or groundwater under the direct influence of surface water, must have a certified Chief Operator to be in responsible charge of the public water system, as per 10 CSR 60-14.010.

Because backflow may cause a health hazard through transmission of contaminants via the public water system, the Continuing Operating Authority must prevent and eliminate any cross-connections within the water system as required by 10 CSR 60-11.010.

I. Inspection and Entry

The Continuing Operating Authority shall allow authorized representatives of the Department access to the system and records for the purpose of inspecting, monitoring, or sampling the public water supply source, distribution system or treatment facility for compliance with the Missouri Safe Drinking Water Law and Regulations. Authorized representatives of the Department, shall be allowed by the Continuing Operating Authority, upon presentation of credentials and at reasonable times, to enter upon Continuing Operating Authority's premises in which a water supply source, distribution system or treatment facility is located or in which any records are required to be kept under terms and conditions of the permit and or the Missouri Safe Drinking Water Law and Regulation.

J. Sanitary Surveys and Inspections

Sanitary Surveys and Inspections for Ground Water Treatment will be conducted per Missouri Safe Drinking Water Law and Regulations 10 CSR 60-4.025.

Ground water systems must provide, at the department's request, any existing information that will enable the department to conduct a sanitary survey or inspection.

A sanitary survey includes, but is not limited to, an onsite review, under the supervision of an engineer, of the water source(s) (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system in order to evaluate the adequacy of the system, its sources and operations, and the distribution of safe drinking water.

If a significant deficiency is identified, unless the department directs the ground water system to implement a specific corrective action, the ground water system must consult with the department regarding the appropriate corrective action within thirty (30) days of receiving written notice from the department of a significant deficiency, written notice from a laboratory that a ground water source sample was found to be fecal indicator-positive, or direction from the department that a fecal indicator-positive sample collected requires corrective action.

K. Emergency Procedures

The Permittee shall prepare and maintain an up-to-date emergency preparedness plan in accordance with 10 CSR 60-12.010

L. Monitoring and Reporting Requirements

The Permittee shall comply with the monitoring and reporting requirements of Missouri Safe Drinking Water Law and Regulations 10 CSR 60-4.010 through 10 CSR 60-4.110 and 10 CSR 60-7.010 through 10 CSR 60-7.020.

M. Civil and Criminal Liability

Except as authorized by statute and provided in permit conditions nothing in this permit shall be construed to relieve the Continuing Operating Authority from administrative, civil, or criminal penalties for noncompliance with the Missouri Safe Drinking Water Law and Regulation.

N. State and Federal Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Continuing Operating Authority from any responsibilities, liabilities, or penalties established pursuant to any applicable state statute or regulations.

O. Water Quality

In the event the Continuing Operating Authority becomes aware of any actual or imminent contamination or water system pressure dropping below 20 psi anywhere in the system (10 CSR 60-4.080) the Continuing Operating Authority will take immediate actions to avoid injury to consumers. These actions include, but are not limited to, customer notification and investigation into the source(s) of contamination.

The Missouri public Drinking Water Regulations 10 CSR 60-7.010 requires systems to notify the department within 48 hours of failure to comply with any drinking water regulation except where a shorter period is specified by the Department.

The Continuing Operating Authority shall provide water which meets all quality criteria of state and federal law.

Port Perry Service Company
Perry County
MO 0116998



Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

October 15, 2012

Mr. Mike Yamnitz
Port Perry
P. O. Box 43
Perryville, MO 63775

LETTER OF WARNING

Dear Mr. Yamnitz:

A compliance inspection of the Port Perry Service Company Wastewater Treatment Facility located on Route T Perry County, Missouri was conducted on September 28, 2012, by a representative of the Missouri Department of Natural Resources' Southeast Regional Office. Enclosed is a copy of the inspection report.

I regret to inform you that during the inspection violations were found and required our office to issue this Letter of Warning. The report outlines the findings of the inspection and lists important recommendations that must be considered to ensure continued compliance.

If you have any questions, please contact me at the Southeast Regional Office, Cape Girardeau Satellite Office, 2007 Southern Expressway, Cape Girardeau, MO or call (573) 651-3008.

Sincerely,

Southeast Regional Office

A handwritten signature in cursive script, appearing to read "Nancy Wilhelm".

Nancy Wilhelm
Environmental Specialist

Enclosures: Report of Compliance Inspection

**REPORT OF COMPLIANCE INSPECTION
PORT PERRY SERVICE COMPANY
PERRY COUNTY
MO-0116998
October 15, 2012**

INTRODUCTION

Pursuant to Section 644.026.1 RSMo of the Missouri Clean Water Law, a routine compliance inspection of Port Perry WWTF in Perry County, Missouri was conducted by a member of the Missouri Department of Natural Resources' Southeast Regional Office on September 18, 2012. Mr. Mackey Smith, Port Perry Maintenance Supervisor, granted permission to enter the site and participated during the inspection.

This inspection was conducted to determine the facility's compliance with Missouri State Operating Permit (MSOP) MO-0116998, the Missouri Clean Water Commission Regulations, and the Missouri Clean Water Law. This report presents the findings and observations made during the compliance inspection.

FACILITY DESCRIPTION

MSOP # MO-0116998 was last issued on December 7, 2007, and expires on December 6, 2012. This permit sets forth effluent limitations, monitoring requirements, and permit conditions, both standard and specific, that the permittee is to follow.

The legal description for the WWTF is listed on the permit as the SE ¼, NE ¼, Section 8, Township 34 North, Range 9 East, in Perry County, Mo. The receiving stream is classified and is listed on the permit as Nations Creek (C) (02780)

The Facility is currently utilizing a four cell no discharge storage lagoon and land application system. Design population equivalent is 740. Design flow is 74,000 gallons per day. Actual flow is 10,000 gallons per day. Waste water at this facility includes domestic waste only.



Each home at Port Perry is equipped with a septic tank and small pump which transfers effluent from the residence homes to the sewer mains and then gravity flows to the lagoon system. The individual residential septic tanks are pumped approximately every 4 to 5 years by a contract hauler. The pumps utilized one chamber of a two cell septic tank and are activated by a float system. Each pump also has a visual high water alarm which is also float activated.

DISCUSSION OF INSPECTION AND OBSERVATIONS

Prior to the inspection, the files and Permit Conditions of MSOP #MO-0006998 for Port Perry Service Company were reviewed. The inspection was conducted during normal business hours. Prior notification of the inspection was provided. Upon arrival at the facility, the inspector met with Mr. Macky Smith, maintenance manager, to discuss the purpose and scope of the inspection. Mr. Smith granted permission to access the site and accompanied throughout the inspection of the facility.



CELL ONE



CELL 4

It was observed on the day of the visit that items listed as unsatisfactory during the previous inspection on February 22, 2011 had not been addressed and still existed on-site. Root growth from trees and shrubs in the lagoon can result in damage to the lagoon liner and the integrity of the berms. Woody material (brush) and weeds growing on and around the berms, and inside the cells provide cover for burrowing animals, which can damage the berm and result in wastewater leakage. A muskrat was seen running from the lagoon during the visit. Annual mowing is seldom adequate to maintain the vegetation which grows on lagoon berms.



10CRS 20-8-020(15) (B) 5 states, "Application areas should be fenced and posted along public roads and public use areas. Fencing is not required **if the wastewater is disinfected prior to application** or if other suitable barriers are provided or if the wetted application area is located in areas where access is limited. This rule goes on to say that **in a public use area** wastewater shall contain as few of the indicator organisms as possible **and in no case shall the irrigated wastewater contain more than two hundred (200) fecal coliform organisms per one hundred milliliters.**

Public Access Restrictions to the land application area is also noted on page 5 number 7- h, in your permit stating that public access to the irrigation site shall not be allowed.

WATER QUALITY MONITORING

The appropriate sampling materials were taken on the inspection, including a copy of the Missouri Department of Natural Resources' Standard Operating Procedures for Sampling. Instruments for field monitoring were taken on the inspection that are capable of testing pH, temperature, conductivity, and dissolved oxygen. Because this is a no discharge facility, no discharge was occurring on the day of the inspection.

COMPLIANCE DETERMINATION

On the day of inspection, no water quality violations were observed at this facility, however, a renewal application for the facility permit, scheduled to expire on December 6, 2012, has not been submitted and the facility failed to address any of the unsatisfactory features as listed in the previous inspection. At this time the facility **cannot be** listed as in compliance, and the unsatisfactory features listed below must be resolved within the time frame listed.

Within the next 15 days you must complete and submit a form B, Application for Construction or Operating Permit For Facilities Which Receive Primarily Domestic Waste, (see link in #1 below for a copy of the form).

You must also complete and submit a time line for completion of items 2 through 4 below to be received by the regional office in the next 15 days. You should state in your schedule the method for resolution and the anticipated completion date. All listed items should be completed no later than December of 2012 with the exception of number 4. Please check our web site or contact the regional office for information regarding available operator training classes.

If the items are not resolved by the anticipated time, the facility could face enforcement action.

UNSATISFACTORY FEATURES

1. On April 27, 2012, you were sent a letter reminding you that your current NPDES permit for this facility would soon be expiring. As of the date of this inspection, the permit application has not been received for processing.

Failure to apply for renewal of your Missouri State Operating Permit at least one hundred and eighty days before expiration is in violation as stated in MO CSR 20-6.010(5)(C) and Standard Conditions for NPDES Permits - Part 1 – General Conditions Section B – Duty to reapply.

The following link should take you to **FORM B – APPLICATION FOR CONSTRUCTION OR OPERATING PERMIT FOR FACILITIES WHICH RECEIVE PRIMARILY DOMESTIC WASTE (≤100,000 gallons per day) UNDER MISSOURI CLEAN WATER LAW:** <http://dnr.mo.gov/forms/780-1512-f.pdf>

REQUIRED ACTION: Complete and submit the required application immediately. The application should be sent to the attention of Refaat Mefrakis, P.E., Chief, Permits and Engineering, Water Pollution Control Branch, Missouri Department of Natural Resources, P. O. Box 176, Jefferson City, MO 65102.

2. Failure to fence the land application site as required in 10CRS 20-8-020(15) (B) 5 or in some way restrict entry.

The regulation as stated above will allow using your land application area as a public use area if the irrigation water has been disinfected and contains less than 200 fecal coliform organisms per 100 / ml.

REQUIRED ACTION: Please restrict the location or make necessary arrangement to add disinfection to your treatment process.

3. Lack of proper maintenance at the lagoon location.

Because vegetation is established within the lagoon cells, it is reasonable to assume that the clay liners have been compromised.

REQUIRED ACTION: The vegetation should be removed and the clay liner inspected by a professional engineer, registered in the state of Missouri. The engineer's report should evaluate the integrity of the clay seal and its ability to collect, hold, and treat domestic wastewater to comply with 10 CSR 20 – 8.020 and all applicable laws and regulations. The report should clarify that the percolation losses do not exceed 1/16 inch per day and make recommendations for any replacement and or necessary repairs to the seal.

4. Although the facility contracts with an A level operator, 10 CSR 20-9.020(B) states, "Any individual who operates or determines the method of operating a wastewater treatment system, either directly or by order," is considered an operator and must maintained a D level certificate.

REQUIRED ACTION: Please be certain all facility personnel maintain proper certifications.

RECOMMENDATIONS

No recommendations.

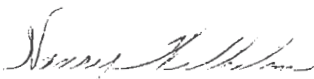
COMMENTS

No further comments.

CLOSING REMARKS


I would like to thank Mr. Smith for his time and cooperation during this inspection. If there are any questions regarding the contents of this report, please feel free to contact me at the Cape Girardeau Satellite Office, 2007 Southern Expressway, Cape Girardeau, MO or at 573-651-3008.

SUBMITTED BY:



Nancy Wilhelm
Environmental Specialist III
Southeast Regional Office

REVIEWED BY:



Bradley K. Ledbetter
Chief, Water Pollution Control Unit
Southeast Regional Office



Jeremiah W. (Jay) Nixon, Governor • Harry D. Bozoian, Director

DEPARTMENT OF NATURAL RESOURCES

dnr.mo.gov

December 16, 2016

Mr. Michael Yamnitz, Co-owner
Port Perry Service Company
728 PCR 724
Perryville, MO 63775

FINDING OF COMPLIANCE

An inspection was conducted by Missouri Department of Natural Resources staff pursuant to the Missouri Clean Water Law on December 14, 2016. The Port Perry Service Company Wastewater Treatment Facility (WWTF) was found to be **in compliance** based upon the observations made at the time of the inspection.

The inspection report describes the findings and may list important recommendations that should be considered to ensure continued compliance. Your cooperation implementing those recommendations will be appreciated.

If you have any questions or would like to schedule a time to meet with department staff to discuss compliance requirements, please contact, Tim Mattingly at (573) 429-6100 or in writing at the Southeast Regional Office, 2155 N. Westwood Blvd., Poplar Bluff, MO 63901.

Sincerely,

SOUTHEAST REGIONAL OFFICE

A handwritten signature in blue ink, appearing to read "A. Goodin".

Arthur Goodin, CHMM
Chief, Water Pollution Control Unit

Enclosures: Report of Inspection

Missouri Department of Natural Resources
Southeast Regional Office/Water Protection Program
Report of Inspection
Port Perry Service Company Wastewater Treatment Facility (WWTF)
460 Lake Perry Lane/Perryville/Perry County
MO-0116998
December 16, 2016

Introduction

Pursuant to Section 644.026.1 RSMo of the Missouri Clean Water Law, I conducted a routine compliance inspection of the Port Perry Service Company Wastewater Treatment Facility (Port Perry WWTF) in Perry County, Missouri, on December 14, 2016. Participants in the inspection were:

Port Perry WWTF

Michael Yamnitz, Co-owner (573) 768-1089 mike@mfaoil.com

MDNR

Tim Mattingly, Environmental Specialist III

This inspection was conducted to determine the facility's compliance with Missouri State Operating Permit MO-0116998, the Missouri Clean Water Commission Regulations, and the Missouri Clean Water Law. This report presents the findings and observations made during the compliance inspection.

Facility Description and History

Missouri State Operating Permit MO-0116998 was issued on December 1, 2013, and expires on November 30, 2018. This permit sets forth benchmarks, monitoring requirements, and permit conditions, both standard and specific, that the permittee is to follow.

Permitted feature #001 is a four-cell storage lagoon with wastewater irrigation. It has a design population equivalent of 740 and a design flow of 740,000 gallons per day (1-in-10 year design including net rainfall minus evaporation). It has an actual flow of 10,000 gallons per day. Design sludge production is 11.1 dry tons per year, with the sludge stored in the lagoon. The irrigation volume per year is 3,662, 320 gallons at design loading (including 1-in-10 year flow) with an irrigated area of 1 acre with 3 acres available. The legal description of the Port Perry WWTF is listed on the permit as SE ¼, NE ¼, Section 8, Township 34 North, Range 9 East, Perry County. The UTM coordinates for permitted feature #001 are x=759731, y=4172557. The receiving stream for this outfall is a tributary to Nations Creek, watershed number 07140105-0108.

A review of the compliance history was reviewed from September 1, 2014 through September 30, 2016, with no violations found.

Discussion of Inspection and Observations

The inspection was conducted during normal business hours, and was announced to ensure access to the site. Upon arrival at Port Perry, I met with Mr. Michael Yamnitz, co-owner, and the purpose and scope of the inspection were outlined. Mr. Yamnitz granted permission to access the site and he accompanied me throughout the tour of the facility.

We proceeded to the lagoon where we discussed how the storage lagoon had been operating, its condition, and land application. Since the fall has been relatively dry, the lagoon's water level appeared to have been drawn down to provide adequate storage for the coming winter months. The control valves that control the water level in the lagoon cells had all been recently replaced. The water level was approximately three feet below the emergency overflow on all cells. There did not appear to have been any discharges from the emergency overflow. The lagoon appeared to be clear and had no offensive odor. There was quite a bit of brush surrounding the lagoon cells however, there were several piles of brush that had been removed and piled. Mr. Yamnitz informed me that some of the men had been helping to clear the brush.

We drove through the land irrigation area and looked at the sprinkler heads. All the sprinkler heads had been serviced but three of the sprinkler heads still needed maintenance or replacement. The irrigated area is between the entrance road and the lagoon property and is posted. The fencing needs a little repair in different areas and, according to Mr. Yamnitz, will be taken care of when the brush is removed.

We proceeded to the pump house to examine the pumping equipment. Mr. Yamnitz indicated that a carpenter has been hired to rehab the pump house. A new service entrance has already been installed. The pumping equipment appeared to be in good condition with the exception of a bearing between the motor and pump. The bearing occasionally fails, likely due to a slight misalignment. The facility does keep a spare bearing in stock. The Port Perry WWTF also chlorinates the irrigation water as it is sent to the sprinklers in the interest of public safety.

The receiving stream was clear with a low flow, both upstream and downstream. There was no trash, bottom deposits, or objectionable odors at any of these streams.

Sampling and Monitoring

The appropriate sampling materials were taken on the inspection, including a copy of the Missouri Department of Natural Resources' Standard Operating Procedures for Sampling. Instruments for field monitoring were taken on the inspection that are capable of testing pH, temperature, conductivity, and dissolved oxygen.

Water quality field monitoring was not conducted at the location, nor was routine sampling, because this facility was not discharging on the day of inspection.

Compliance Determination and Required Actions

Based upon observations made at the time of the inspection and a review of Discharge Monitoring Reports, the facility was found to be in compliance with the Missouri Clean Water Law, the Clean Water Commission Regulations, and Missouri State Operating Permit MO-0116998.

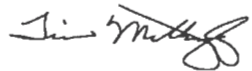
Recommendations

I recommend that the brush removal continue and that the minor fence repair be accomplished as soon as practicable.

Comments

The Port Perry WWTF appears to be operating in an acceptable manner. We encourage the operator to continue to operate the facility in this manner. I would like to thank Mr. Yamnitz for his time and assistance during this inspection.

SUBMITTED BY:



Tim Mattingly
Environmental Specialist III
Southeast Regional Office

REVIEWED BY:



Arthur Goodin, CHMM
Chief, Water Pollution Control Unit
Southeast Regional Office

Attachment #1-Photos 1 through 3



Photo #: 001
By: Tim Mattingly
Facility: Port Perry WWTF
Permit: MO-0116998
Location: Perry County

Description: This is the primary cell of the four cell system at Port Perry. The trees in the cell are cypress and are part of the original design.

Date Taken: 12/14/2016
Program: WPC Unit



Photo #: 002
By: Tim Mattingly
Facility: Port Perry WWTF
Permit: MO-0116998
Location: Perry County

Description: A picture of cell three of the four cell lagoon. Cell two was obscured by brush in the fence row.

Date: 12/14/2016
Program: WPC Unit



Photo #: 003
By: Tim Mattingly
Facility: Port Perry WWTF
Permit: MO-0116998
Location: Perry County

Description: A photo of cell four of the lagoon system at Port Perry.

Date Taken: 12/14/2016
Program: WPC Unit

Attachment #2-Photos 4 through 6



Photo #: 004
By: Tim Mattingly
Facility: Port Perry WWTF
Permit: MO-0116998
Location: Perry County

Description: This is a view of part of the irrigation area at Port Perry.

Date Taken: 12/14/2016
Program: WPC Unit



Photo #: 005
By: Tim Mattingly
Facility: Port Perry WWTF
Permit: MO-0116998
Location: Perry County

Description: Another view of the irrigation area at Port Perry. This area is posted with signs to stay out of the area.

Date: 12/14/2016
Program: WPC Unit



Photo #: 006
By: Tim Mattingly
Facility: Port Perry WWTF
Permit: MO-0116998
Location: Perry County

Description: A close up view of the irrigation sprinklers at Port Perry.

Date Taken: 12/14/2016
Program: WPC Unit

Attachment #3-Photos 7 through 9



Photo #: 007
By: Tim Mattingly
Facility: Port Perry WWTF
Permit: MO-0116998
Location: Perry County

Description: This photo shows the piles of brush that have been cut and the new electrical service going to the pump house.

Date Taken: 12/14/2016
Program: WPC Unit



Photo #: 008
By: Tim Mattingly
Facility: Port Perry WWTF
Permit: MO-0116998
Location: Perry County

Description: This is the pump house. Plans are to rehab the pump house.

Date: 12/14/2016
Program: WPC Unit



Photo #: 009
By: Tim Mattingly
Facility: Port Perry WWTF
Permit: MO-0116998
Location: Perry County

Description: A picture of the pumping equipment. The old bearing is within the yellow circle. The facility keeps a spare bearing on hand. The chlorination unit is sitting on the left under the yellow arrow.

Date Taken: 12/14/2016
Program: WPC Unit



Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

July 31, 2015

Mr. Jason Williamson, Receivership
Gladlo Water & Sewer Inc.
c/o Heartland Utilities
7581 East Academy Blvd., Suite 229
Denver, CO 80230

Dear Mr. Williamson:

Enclosed is a Compliance and Operation Inspection Report for the community public water system serving Gladlo Water & Sewer Inc., PWS ID # MO3036151, Rolla, Phelps County, Missouri. The purpose of the inspection was to determine the public water system's compliance with the Missouri Safe Drinking Water statutes. Please direct your attention to the requirements and recommendations contained in the report and provide a written response to the department within **60 calendar days** from the date of this letter. Your response should be specific in detailing how you intend to correct the problems identified.

If you have any questions regarding the enclosed inspection report, please feel free to contact me at (573) 368-7344 in the Missouri Department of Natural Resources, Southeast Regional Office, Rolla Satellite Office, 111 Fairgrounds Road (P.O. Box 250), Rolla, MO 65401. Thank you for your cooperation to preserve, protect and enhance Missouri's natural, cultural and energy resources.

Sincerely,

SOUTHEAST REGIONAL OFFICE

A handwritten signature in black ink, appearing to read 'M Oglesby'.

Michelle Oglesby
Environmental Specialist III
Rolla Satellite Office

MO/lm

Enclosures: Compliance and Operation Inspection Report
Photo Attachment
Water Supply Facility Operation Agreement – Contract Operator
Chief Operator's Agreement

c: Mr. Russ Guill, 1604 Soest Road, Rolla, MO 65401
Mr. Steve Loethen, 13921 Lower Bottom Road, St. Thomas, MO 65076
Public Service Commission, P.O. Box 360, Jefferson City, MO 65101
Public Drinking Water Branch (electronically)

Missouri Department of Natural Resources
Southeast Regional Office/Public Drinking Water Program
Report of Inspection
Gladlo Water & Sewer Inc.
7581 East Academy Blvd., Suite 229, Denver, CO 80220
Phelps County
MO3036151

Introduction:

Pursuant to Section 640.100.4 of the Missouri Safe Drinking Water Statutes, a routine Compliance and Operation Inspection of Gladlo Water & Sewer Inc.'s public drinking water system was conducted by Ms. Michelle Oglesby of the Southeast Regional Office on July 27, 2015. Individual present during the inspection was Mr. Russ Guill, Sample Collector. This inspection was conducted to determine the facility's compliance with the Missouri Safe Drinking Water Statutes and the Missouri Safe Drinking Water Regulations. This report presents the findings and observations made during the inspection and covers all (8) critical components of a public water system.

Facility Description and History:

The Gladlo Water & Sewer Inc.'s water system is classified as a community public water system that is in operation throughout the year. This is a primary system which is 100% groundwater. The system is comprised of a well and a 1,000 gallon pressure tank. The system serves a population of approximately 150 individuals with 71 service connections and produces an average of 7,090 gallons per day. The water system figures water loss and has calculated the water loss at 22%.

Gladlo Water & Sewer Inc.'s water system is classified at a DS I level of certification for distribution. The operator in charge of distribution is listed as Mr. Steve Loethen, Certification #4677. Mr. Loethen has a DS III certification for distribution and a C certification for treatment. There is no certified back-up operator for this public water system.

The well for Gladlo Water & Sewer Inc. is at decimal degrees [38.0037, -91.7220].

The last inspection was conducted on March 13, 2013, with several items noted for correction. Since that time, the water system has addressed the corrosion of the wellhead, casing and storage, and paid overdue primacy fees for calendar years 2007-2008, along with laboratory services/program administration fees for calendar years 2008-2009.

Review of Gladlo Water & Sewer Inc.'s monitoring history for the last two (2) years indicated that the public water system failed to meet microbiological maximum contaminant levels outlined in the Missouri Safe Drinking Water Commission regulation 10 CSR 60-4.020(7)(A) for the month of July 2013. The water system also violated Missouri Safe Drinking Water Commission regulation 10 CSR 60-4.020, by failing to submit a sample for bacteriological analyses during the month of September 2014.

Discussion of Inspection and Observations:

Prior to the inspection, the files and other facility information for Gladlo Water & Sewer Inc. Public Water System (MO3036151) were reviewed. The inspection was conducted during normal business hours. Prior notification of the inspection was provided to ensure timely access to the site.

Upon arrival at the facility, I met with Mr. Russ Guill. During this time, I reintroduced myself and conducted a review of all relevant paperwork associated with the water system. Mr. Guill provided copies of all sample results, maintenance log and site sample Mr. Williamson had emailed me prior to the inspection of the water system's water usage, water loss, 2014 CCR, Site sample plan, Cross Connection Control Plan, Emergency Operation Plan, Lead Ban and System Inventory Information. I inquired about an up-to-date distribution map and Mr. Guill informed me that there isn't one for the water system. We also discussed that the water system has no flush hydrants to conduct annual or semi-annual flushing of the water system. After review of the Emergency Operation Plan, it was observed that the water system has a long term back-up plan for power outages (bottled water/offsite portable water); however the water system appears to not have access to a generator for a secondary source of power.

After the records review, I inspected the well and 1,000 gallon pressure tank, which are both housed in a large building. The well is approximately 550 feet deep with 400 feet of 6" casing. The well pumps approximately 75 gpm. The wellhouse and controls appeared ok. I did observe that there is an air tube for a drawdown gauge however the gauge was not installed at this time. Mr. Guill informed me that he keeps the drawdown gauge in his shop. In inquired as to how often drawdown readings are conducted and Mr. Guill informed me that he has not conducted any drawdown readings within the last year. We also discussed the pressure tank which is an air to water pressure tank. Currently, the pressure tank holds 1/3 of its water capacity. Mr. Guill informed me that if the pressure tank holds more than 1/3 it will off gas at one of the valves. With this being at maximum a 1,000 gallon pressure tank we discussed that the water storage for this system is undersized and additional storage would be beneficial for the water system.

Sampling and Monitoring:

During the inspection, the necessary sampling equipment was taken as required by the Public Drinking Water Sampling Requirements for Inspections. A bacteriological water sample was collected at 11200 Greenfield sample site. The sample was submitted to the Phelps County Health Department for courier pickup and analyzed at the Health Department's State Health Lab in Jefferson City. The sample was analyzed as coliform absent (**safe**). **The following analytical field data was collected at the time of inspection:**

Analytical Field Data			
Parameter	Sample Location	Results	Units
Bacteria (Total Coliform)	11200 Greenfield	Absent	CFU/100 ml

Compliance Determination and Required Actions:

This facility was found to be in **non-compliance** with the Missouri Safe Drinking Water Regulations based on observations made at the time of the inspection.

Significant Deficiencies

Significant Deficiencies cause, or have the potential to cause, the introduction of contaminants into water delivered to customers.

No Significant Deficiencies were cited as a result of this inspection.

Unsatisfactory Features

The Ground Water Rule specifies eight elements integral to an effective inspection of a public water system. The eight elements are: Source (protection, physical components, and condition); Treatment; Distribution System; Finished Water Storage; Pumps, Pump Facilities, and Control; Monitoring, Reporting, and Data Verification; Water System Management and Operations; and Operator Compliance with State Requirements. Your public water system was evaluated for compliance with these eight elements.

The following unsatisfactory features were noted with comments and recommendations for correction and listed below.

1. The public water system does not have a stand-by chief operator to operate and maintain the drinking water system in the event that the chief operator is unavailable or incapacitated.

This is in violation of Missouri Safe Drinking Water Commission Regulation 10 CSR 60-14.010, which establishes certification requirements for public water system operators. This regulation requires community public water systems to develop a contingency plan for a stand-by chief operator to be available at all times. This may be a second employee certified at the chief operator level, a mutual assistance agreement with a neighboring system, or a pre-arrangement with a contract operator. In some situations multiple backup operators may be required. Sample agreements have been included with this inspection report.

Within **60 calendar days**, the public water system must submit a plan of action, to the Missouri Department of Natural Resources, Southeast Regional Office, Rolla Satellite Office, P.O. Box 250 (111 Fairgrounds Rd.), Rolla, MO 65402-0250, outlining the public water system's plan to retain services of a stand-by chief operator(s). This plan of action should contain the name(s) of the contracted stand-by chief operator(s), a copy of the work agreement contract and a copy of contracted stand-by chief operator(s) certification certificate; or the name of any individual(s) scheduled dates to attend a certification training course or online course with a planned timeframe for completion to include operator certification testing date(s). For additional information on training courses or operator certification testing dates, please contact the Missouri Department of Natural Resources, Water Protection Program, Operator Certification Section at (800) 361-4827 or (573) 751-1600, P.O. Box 176 (1101 Riverside Dr.), Jefferson City, MO 65102-0176.

2. The public water system does not have a written agreement with the contracted chief water operator.

This is in violation of Missouri Safe Drinking Water Commission regulation 10 CSR 60-14.010(4)F(1), which establishes the requirements of a water operator that is contracted. A public water system shall place the direct supervision of each treatment and distribution system under the responsible charge of a certified chief operator. This public water system requires a Water Distribution Level I (DS-I) operator to oversee and inspect all waterline repairs/system construction, and perform operational activities such as taking water samples, flushing the water system, changing out meters/valves and any other day to day operations of the distribution system. Public water systems employing a certified chief operator through a contract arrangement shall have a written agreement indicating the responsibilities of the operator, including but not necessarily limited to:

- a. The minimum frequency of routine visits to the water treatment facility or distribution system;

- b. The operator's duties and responsibilities;
- c. The minimum hours the operator will be present for each routine visit;
- d. The certification level required by the department for the treatment facility and/or distribution system that the operator is responsible for;
- e. The level of certification held by the contract operator;
- f. The minimum response time for the operator to be at the water system in the event of an emergency; and
- g. The number of employees, if any, hired to assist.

Within **60 calendar days**, the public water system must submit a written agreement with the contracted chief water operator, to the department's Southeast Regional Office's Rolla Satellite Office, P.O. Box 250 (111 Fairgrounds Rd.), Rolla, MO 65402-0250. Sample agreements have been included with this inspection report.

3. The public water system is violating Missouri Safe Drinking Water Commission regulation 10 CSR 60 16.010 and 10 CSR 60 16.030, because it has failed to pay the required primacy fees and laboratory services/program administration fees for calendar year 2015.

Community public water systems shall submit an annual primacy fee for each active service connection for unmetered and metered customers, based on meter size, and annual laboratory services/program administration fees. These fees help to pay for microbiological and chemical testing the department is required to do for public water systems. Missouri is unique in that the department provides testing services for public water systems within the state. Without these fees, each public water system would have to hire their own private laboratories to do the required testing at a much higher cost. Also, each public water system would have to track which/when tests must be done and obtain the appropriate sample containers to collect the samples. The primacy fee is an additional charge to the customer and the public water system is allowed to keep a portion of the primacy fee to pay for administrative costs.

Within **60 calendar days**, the public water system must contact Ms. Tina Stockman at (573) 751-5331 in the Missouri Department of Natural Resources, Fiscal Management Unit, P.O. Box 176 (1101 Riverside Dr.), Jefferson City, MO 65101-0176, to resolve payment of these required annual fees.

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Recommendations:

1. The public water system does not have an up-to-date distribution map.

Copies of an updated distribution map(s) should be made available to water system operators and others involved in operation, maintenance and management of the public water system. Water lines need to be indicated on distribution map(s) in relation to buildings, roads or permanent landmarks. Known water lines should have size indicated and be shown as a solid line on the map(s). With unknown water lines, estimated locations should be indicated as dashes on distribution map(s). Accurate locations of public water system facilities can be critical in times of an emergency and may aid to eliminate and/or reduce the duration of water outages during repairs.

The department recommends that the public water system establish an updated distribution map(s) depicting the entire water system to include accurate locations of water lines, hydrants, valves, sample points, etc.

2. The public water system is not equipped with flush hydrants.

Flush hydrants are used for small areas of distribution systems that must be flushed periodically to control red water problems and taste/odor problems. Flush hydrants are also used to flush out a main after a leak or repair to remove any contaminated water so contamination does not extend into the entire water system or within a customer's home. Dead end water lines are also areas that require special flushing and must be fitted with a flush hydrant.

The department recommends that the public water system at minimum install flush hydrants on all dead end water lines and then in the remaining water system to have a means of periodic flushing.

3. The public water system has a documented water loss of approximately 22% for the year.

The water loss was determined by calculating the amount of water pumped versus the amount of water sold. Water amounts sold and pumped were given to the department before the time of inspection. Any time a water loss is greater than 10% a public water system should initiate steps to determine where the loss is coming from and take action to eliminate the cause. The public water system may take into account the water used for flushing, main repairs and storage cleaning when determining water loss.

The department recommends that the public water system continue to take steps to locate the source(s) of water loss and make the necessary corrections.

4. The public water system does not have sufficient hydropneumatic storage for the current population.

A hydropneumatic (pressure) tank of adequate volume is necessary for efficient operation of a public water system. In operation, pressure tanks act as well control devices rather than true storage. The greatest wear on a well pump occurs when it is turned on, not while the pump is running. With an insufficient sized pressure tank, the well pump is turned on frequently for very short durations. By sizing the gross volume of a pressure tank at 35 gallons per person served, the well pump is activated less and allowed to run for a longer period of time before it shuts off, resulting in less wear on the well pump motor. An adequately sized pressure tank also provides a more even and constant pressure to your customers. The public water system should plan on a gross volume of 35 gallons for each person served and an average of three (3) persons per household.

The department recommends that the public water system begin planning now for adding additional storage tanks to adequately serve the water system.

5. The public water system does not have adequate emergency electrical power.

The public water system should have adequate emergency electrical power sources for key equipment. This may include, but should not be limited to, service from two (2) power

companies, permanent generators at each remote facility and/or portable generators. Properly sized emergency electrical generators should be available to ensure continued water service under emergency conditions.

The department recommends that the public water system either purchase and install generators or make arrangements with a rental company so that generators are available during an emergency power outage.

6. The well's drawdown gauge is not being utilized to measure for static water level(s) and pumping water level(s) throughout the calendar year.

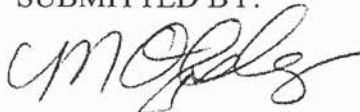
Drawdown measurements/readings are used to detect the water level within the well. If the water is drawn down to the pump intake point, pump damage may occur. Drawdown measurement/readings are intended to make it possible for the operator to detect and prevent such problems.

The department recommends, at minimum, that drawdown readings be taken during the summer months when water usage is at the highest, however, monthly readings are recommended for verification of well water level(s) throughout the calendar year.

COMMENTS:

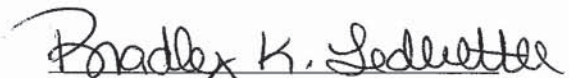
I would like to commend you for your efforts and attention to the water system in providing safe potable water for the public to drink. I would also like to thank Mr. Russ Guill for his time and assistance during the inspection. If there are any questions concerning this report please feel free to contact me at 573-778-2875.

SUBMITTED BY:



Michelle Oglesby
Environmental Specialist III
Southeast Regional Office

APPROVED BY:



Bradley K. Ledbetter
Chief, Public Drinking Water Unit
Southeast Regional Office

PHOTO ATTACHMENT

Page 1 of 1



Photo #:1
Date Taken: 07/27/2015
By: Michelle Oglesby
Program: PDWB
File: Phelps County
Location: Gladlo Water & Sewer Inc.
Description: Well head and casing.

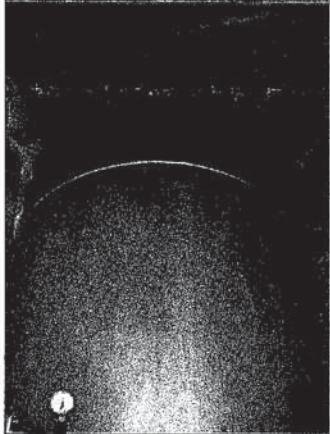


Photo #:2
Date Taken: 07/27/2015
By: Michelle Oglesby
Program: PDWB
File: Phelps County
Location: Gladlo Water & Sewer Inc.
Description: Upper terminal of 1,000 gallon pressure tank.



Photo #:3
Date Taken: 07/27/2015
By: Michelle Oglesby
Program: PDWB
File: Phelps County
Location: Gladlo Water & Sewer Inc.
Description: Lower terminal of 1,000 gallon pressure tank.