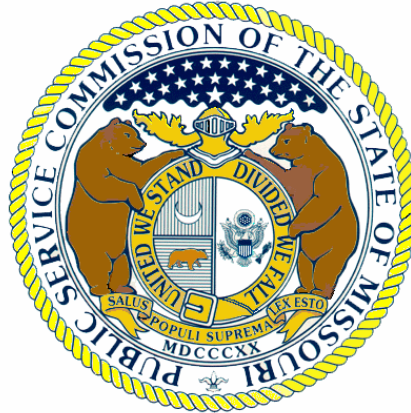


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of Kenneth Jaeger and  
Blue Lagoon Sewer Corp.

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**Case No. SO-2008-0358**

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**REPORT AND ORDER**

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**Issue Date: July 15, 2008**

**Effective Date: July 25, 2008**

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Kenneth Jaeger and  
Blue Lagoon Sewer Corp.

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**Case No. SO-2008-0358**

## **APPEARANCES**

**Christina Baker**, Assistant Public Counsel,  
P.O. Box 2230, Jefferson City, Missouri 65102

For the Office of the Public Counsel and the Public.

**Keith R. Krueger**, Deputy General Counsel,  
P.O. Box 360, Jefferson City, Missouri 65102

For the Staff of the Missouri Public Service Commission

**REGULATORY LAW JUDGE:**    **Morris L. Woodruff**

## **REPORT AND ORDER**

### **Summary**

This order directs the Commission's Staff to file a petition in circuit court seeking the appointment of a receiver to take charge of the sewer system owned by Kenneth Jaeger.

### **FINDINGS OF FACT**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

### **Procedural History**

On May 1, 2008, the Office of the Public Counsel filed a motion asking the Commission to appoint an interim receiver to take charge of the Blue Lagoon sewer system

located in rural Ralls County, Missouri. Public Counsel also asks the Commission to order its Staff to petition the Circuit Court to appoint a permanent receiver for that sewer system.

Public Counsel's motion alleges that Kenneth Jaeger, apparently doing business as Blue Lagoon Sewer Corp.,<sup>1</sup> is the owner and operator of the Blue Lagoon sewer system. Public Counsel asserts that Jaeger has filed for bankruptcy in Federal Court in Texas and has effectively abandoned the sewer system. Public Counsel warns that no provision has been made for the safe and adequate operation of that system.

On May 5, the Commission issued an Order Directing Response to Motion for Appointment of a Receiver and served it on Kenneth Jaeger by certified mail at his last known address in the state of Texas. Jaeger signed a receipt acknowledging delivery of that notice on May 16. The order directed Jaeger to respond to Public Counsel's motion no later than May 27.

Jaeger responded on May 21 by filing a handwritten letter indicating his willingness to transfer the sewage lagoon and spray area if such a transfer is approved by the bankruptcy court in Texas. Subsequently, on May 23, a letter was filed from Eduardo V. Rodriguez, a Texas attorney representing Jaeger in the bankruptcy proceeding, confirming that Jaeger is willing to execute an agreed motion to lift the automatic bankruptcy stay to transfer the sewer system to the Commission.

On May 29, the Commission issued an order scheduling a hearing on Public Counsel's motion. The hearing was convened on June 23. Jaeger and Blue Lagoon

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<sup>1</sup> Public Counsel's motion asserts that Blue Lagoon Sewer Corp. is merely a fictitious company name used by Jaeger, as the Missouri Secretary of State's office has no record of a Blue Lagoon Sewer Corp. registered to do business in Missouri. Section 417.200 RSMo 2000 provides that it is unlawful to engage in or transact business in Missouri under a fictitious name without first registering the fictitious name with the Secretary of State.

Sewer Corp. did not appear for the hearing. Public Counsel and Staff presented testimony in support of Public Counsel's motion.

### **The Services Provided by Jaeger**

Public Counsel presented the testimony of Paul Dickerson, an Environmental Specialist employed in the compliance and enforcement section of the Missouri Department of Natural Resources. It is his responsibility to enforce the Missouri Clean Water Law.<sup>2</sup> Dickerson established that Jaeger has been operating a wastewater treatment system serving a rural area in Ralls County, Missouri.<sup>3</sup> Specifically, the sewer system serves the Lost Valley subdivision, as well as a commercial development including an RV campground known as Salt River Campground.<sup>4</sup> The area served is a recreational area located below the dam that forms Mark Twain Lake. It is not near any town.<sup>5</sup> The sewer system currently serves approximately 36 customers, at least some of whom have been billed for those services.<sup>6</sup>

The Blue Lagoon sewer system is designed to be a no-discharge collection system. Wastewater from the customer's homes or businesses is piped into a storage lagoon that is essentially a lake. The wastewater is stored in the lagoon until it can be sprayed over a grassy land-application field during the spring, summer, and fall months. Generally, the land-application cannot occur when the ground is frozen in the winter months. If the

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<sup>2</sup> Transcript, Page 9, Lines 1-8.

<sup>3</sup> Transcript, Pages 10-11, Lines 22-25, 1-3.

<sup>4</sup> Exhibit 17.

<sup>5</sup> Transcript, Page 78, Lines 9-23.

<sup>6</sup> Transcript, Page 57, Lines 9-21. See *a/so*, Exhibit 17.

system is operated properly, the wastewater will be absorbed into the field and will not flow into and pollute any stream.<sup>7</sup>

Unfortunately, the sewer system is not being operated properly. The wastewater has not been pumped through the land-application system and as a result, the lagoon is over-full and is discharging wastewater over the emergency spillway into a creek. In addition, a lift station designed to pump water into the lagoon does not have a working pump and as a result, untreated sewage is being discharged into a stream before it even reaches the storage lagoon.<sup>8</sup>

Over the past several years, the Department of Natural Resources, represented by the Missouri Attorney General, has turned to the Circuit Court of Ralls County in an attempt to force Jaeger to bring the sewer system into compliance with the Missouri Clean Water Law. The Circuit Court of Ralls County has issued multiple orders directing Jaeger to take specified actions, but the system remains out of compliance.<sup>9</sup>

For a time, it appeared that Jaeger would convey the sewer system to a new limited liability corporation, Blue Lagoon, LLC, owned by Alvin “Bub” Thompson.<sup>10</sup> Blue Lagoon, LLC, and Jaeger actually filed a joint application with the Commission for permission to transfer the sewer system and for a certificate of public convenience and necessity to be issued to Blue Lagoon, LLC.<sup>11</sup> Jaeger has never had such a certificate from this

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<sup>7</sup> Transcript, Pages 48-49, Lines 17-25, 1-20.

<sup>8</sup> Transcript, Pages 31-32, Lines 25, 1-5.

<sup>9</sup> Transcript, Pages 43-44, Lines 18-25, 1-8.

<sup>10</sup> Transcript, Page 30, Lines 14-23. See *also*, Exhibit 13.

<sup>11</sup> Transcript, Page 80, Lines 10-19.

Commission.<sup>12</sup> However, the parties dismissed their application after Jaeger filed for bankruptcy.<sup>13</sup> Ultimately, the circuit court found Jaeger in contempt of court and on April 23, 2008, issued an Order of Commitment directing the Sheriff of Ralls County to place Jaeger into the Ralls County jail until such time as he has purged himself of contempt by making necessary repairs and improvements to the sewer system.

### **The Appointment of a Receiver**

Public Counsel's motion asks the Commission to appoint an interim receiver to take charge of the Blue Lagoon sewer system while Staff seeks the appointment of a permanent receiver in circuit court. Martin Hummel, an engineer employed by the Commission, testified that Staff had not yet found a qualified person willing to serve as a receiver.<sup>14</sup>

### **CONCLUSIONS OF LAW**

The Missouri Public Service Commission has reached the following conclusions of law.

Kenneth Jaeger owns and operates a sewer system for the collection, treatment, and disposal of sewage for gain and therefore is a sewer corporation as that term is defined in Subsections 386.020(48) RSMo (Supp. 2007). As such, Jaeger is a public utility as defined by Section 386.020(42), RSMo (Supp. 2007), and is subject to the Commission's jurisdiction.

Subsection 393.145.1, RSMo (Supp. 2007), provides as follows:

If, after hearing, the commission determines that any sewer or water corporation that regularly provides service to eight thousand or fewer

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<sup>12</sup> Transcript, Pages 79-80, Lines 24-25, 1-2.

<sup>13</sup> *In the Matter of the Joint Application of Kenneth Jaeger and Blue Lagoon, LLC.*, Case No. SM-2008-0188, Notice of Dismissal, May 6, 2008.

<sup>14</sup> Transcript, Page 62, Lines 19-22.

customer connections is unable or unwilling to provide safe and adequate service, has been actually or effectively abandoned by its owners, or has defaulted on a bond, note or loan issued or guaranteed by any department, office, commission, board, authority or other unit of state government, the commission may petition the circuit court for an order attaching the assets of the utility and placing the utility under the control and responsibility of a receiver. The venue in such cases shall, at the option of the commission, be in the circuit court of Cole County or in the circuit court of the county in which the utility company has its principal place of business.

Furthermore, Subsection 393.145.2, RSMo (Supp. 2007), provides as follows:

If the Commission orders its general counsel to petition the circuit court for the appointment of a receiver under subsection 1 of this section, it may in the same order appoint an interim receiver for the sewer or water corporation. The interim receiver shall have the authority generally granted to a receiver under subsection 6 of this section, except that the commission cannot authorize the interim receiver to transfer by sale or liquidate the assets of the utility. The interim receiver shall be compensated in an amount to be determined by the commission. The interim receiver shall serve until a judgment on a petition for writ of review of the commission's order, if any, is final and unappealable, and until the circuit court thereafter determines under subsection 5 of this section whether to grant the commission's petition for appointment of receiver.

In addition, Subsection 393.145.3, RSMo (Supp. 2007), provides as follows:

When the commission files its petition for appointment of receiver in the circuit court, it shall attach to its petition an official copy of its determination under subsection 1 of this section. The commission shall not file such action until its determination under subsection 1 of this section is final and unappealable.

Subsection 393.145.5, RSMo (Supp. 2007), requires that a receiver appointed under that section be "a responsible person, partnership, or corporation knowledgeable in the operation of utilities."

Jaeger has filed for bankruptcy in federal court in the state of Texas. Under the Bankruptcy Code at 11 U.S.C. Section 362(a), the filing of a bankruptcy petition operates as an automatic stay on the commencement or continuation of judicial, administrative or other actions or proceedings against the debtor. However, under 11 U.S.C. Section

362(b)(4), an exception is made for an action or proceeding by a governmental unit to enforce that governmental unit's police and regulatory power. The action Public Counsel asks the Commission to take in this case is aimed at enforcing the Commission's authority to ensure that the customers served by Jaeger's sewer system receive safe and adequate sewer service and thus this action is exempt from application from the automatic stay.

### **DECISION**

After applying the facts as it has found them to its conclusions of law, the Commission has reached the following decisions. The evidence presented by Public Counsel and Staff clearly demonstrates that Jaeger has effectively abandoned the Blue Lagoon sewer system. As a result, raw, untreated sewage is flowing into a stream, creating an obvious danger to nearby residents and the environment of this state. There is a clear and immediate need for the appointment of a receiver to take charge of this company to ensure that its customers are able to receive safe and adequate sewer service.

The Commission would also like to appoint an interim receiver to take immediate control of the operation of this sewer system while this matter is pending in circuit court. However, neither Staff nor Public Counsel has been able to identify a person willing and able to serve in that role. Rather than wait for such a person to be identified, the Commission will direct its Staff to act promptly to file a petition in the Circuit Court of Ralls County seeking the appointment of a receiver.

#### **IT IS ORDERED THAT:**

1. The General Counsel of the Commission is directed to petition the Circuit Court of Ralls County for an order attaching the Blue Lagoon sewer system owned and controlled



by Kenneth Jaeger and placing that sewer system under the control and responsibility of a receiver.

2. The Commission's Data Center shall mail a copy of this Report and Order to the Trustee in Bankruptcy for Kenneth Jaeger's bankruptcy case in the United States Bankruptcy Court, Southern District of Texas, Brownsville Division.

3. This report and order shall become effective on July 25, 2008.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton, Jarrett,  
and Gunn, CC., concur,  
and certify compliance with the provisions  
of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 15<sup>th</sup> day of July, 2008.