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2009 FEB 25 P 1:52

Arizona Corporation Commission

KRISTIN K. MAYES, Chairman

AZ CORP COMMISSION  
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DOCKETED

GARY PIERCE

FEB 26 2009

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

DOCKETED BY

IN THE MATTER OF JOHNSON UTILITIES, L.L.C.  
FOR AN EXTENSION OF ITS SEWER  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY IN PINAL COUNTY, ARIZONA

DOCKET NO. WS-02987A-07-0487

**PUBLIC COMMENTS OF SWING FIRST GOLF LLC**

Swing First Golf LLC ("Swing First") hereby submits public comments in the above-captioned docket. Swing First receives water, wastewater, and treated effluent from Johnson Utilities LLC ("Utility").

In this docket, Utility asks the Commission to extend its sewer Certificate of Convenience and Necessity ("CC&N) in Pinal County. Based on the information presented at the August 7, 2008, hearing and certain post-hearing exhibits, Judge Kinsey drafted a thorough, well-reasoned Recommended Opinion and Order ("ROO") for the Commission's consideration at Open Meeting. However, Judge Kinsey did not have all relevant facts before her when she drafted the ROO.

**Addition Notices of Violation.** After the August 7, 2008, hearing, the Arizona Department of Environmental Quality ("ADEQ") issued two more Notices of Violation ("NOVs") to Utility. Exhibit A to these public comments is a copy of a press report concerning the violations. Acting on an anonymous complaint, ADEQ conducted an unannounced inspection of Utility's Section 11 wastewater treatment plant. ADEQ discovered that Utility had improperly stored over 34,000 gallons of dangerous sewage sludge in open trenches on the plant site. ADEQ is justifiably concerned with preventing groundwater contamination as a result of

1 the improper storage. As a result of its surprise inspection, on October 8, 2008, ADEQ issued  
2 NOV 99135, and on October 20, 2008, ADEQ issued NOV 10272.

3 In the ROO, Judge Kinsey stated:

4 Johnson's two recent SSOs [Sewer System Overflows] raise serious concerns  
5 regarding public safety. The Company experienced two SSOs in the same  
6 location within a short time span. The homeowners in the Pecan Creek North  
7 subdivision, living adjacent to the concrete channel where the sewage from the  
8 SSOs was contained, were subjected to viewing sewage from their homes and test  
9 results of the storm water in the Queen Creek wash adjacent to where the SSOs  
10 occurred continue to test positive for the presence of E. coli and coliform.  
11 Further, even though Johnson has entered into a Consent Order with ADEQ,  
12 ADEQ has not released Johnson from the twice weekly requirement to test the  
13 storm water in the Queen Creek wash and has not closed the March 2008 NOV.<sup>1</sup>

14 These two additional serious NOV's raise even more concerns regarding public safety. It would  
15 be premature to award Utility a CC&N extension until the Commission has conducted additional  
16 hearings concerning the NOV's and received an answer from Utility to this question: Should a  
17 Utility that has received four serious NOV's in less than eight months concerning its sewer  
18 operations be allowed to serve additional sewer customers?

19 **Lawsuits against Protesting Customers.** The Commission has also not considered  
20 another extremely troubling issue. Exhibit B to these public comments is a copy of a press  
21 report concerning lawsuits filed by Utility against customers who protested the sewage spills  
22 from the Pecan Plant. The above-cited section of the ROO states: "The homeowners in the  
23 Pecan Creek North subdivision, living adjacent to the concrete channel where the sewage from  
24 the SSOs was contained, were subjected to viewing sewage from their homes ... ." It appears  
25 that Utility sued at least two of the protesters for defamation.

26 Utility's conduct is outrageous and unprecedented. Utility's customers were frightened  
27 by two sewage discharges in their backyards, which were loaded with dangerous e-coli bacteria.  
28 They justifiably desired that Utility take all reasonable steps to clean up the raw sewage and

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<sup>1</sup> ROO at 11:11-18. (Emphasis added).

1 ensure that this never happen again. They thought that they could exercise their free-speech  
2 rights as part of a protest and press interviews.

3 Utility's lawsuits are clearly intended to silence these protestors and to intimidate further  
4 protest. It also appears that the lawsuits are frivolous. Utility is very unlikely to ever recover a  
5 cent from its customers, but these customers, after living for months with raw sewage in their  
6 backyards, will now be forced to endure the additional trauma and expense of defending the  
7 lawsuits.

8 As part of additional hearings in this docket, the Commission should receive an answer  
9 from Utility to this question: Should a Utility that uses lawsuits to silence protesting customers  
10 be allowed to serve additional sewer customers?

11 **Additional Issues.** Swing First has raised a number of other troubling issues in Utility's  
12 rate case, Docket No. WS-02987A-08-0180. These include:

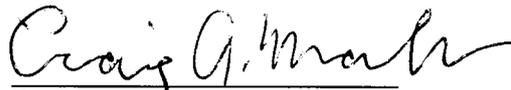
- 13 1. Whether Utility inappropriately discharged raw sewage into a neighborhood wash,  
14 whether faulty construction contributed to that discharge, and whether Utility has  
15 taken all appropriate steps to ensure that further public-safety threats do not occur;
- 16 2. Whether Utility harassed and intimidated customers—including those participating in  
17 a neighborhood protest—with frivolous defamation lawsuits;
- 18 3. Whether Utility knowingly and illegally stored dangerous sewage sludge at its  
19 Section 11 treatment plant;
- 20 4. Whether Utility has been previously subject to numerous environmental fines;
- 21 5. Whether Utility knowingly and illegally charges its customers for taxes;
- 22 6. Whether Utility delayed the rate filing so it could continue overcharging its water  
23 customers millions of dollars per year;
- 24 7. Whether Utility has engaged in illegal affiliate transactions;
- 25 8. Whether, Utility failed to deliver available effluent to irrigation customers;
- 26 9. Whether Utility deliberately billed an incorrect (higher) rate for irrigation customers;
- 27 10. Whether Utility deliberately withheld irrigation water during times of high-irrigation  
28 needs;
- 29 11. Whether Utility deliberately flooded an irrigation customer's golf course;
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1 12. Whether Utility deliberately tried to intimidate a party from further participating in  
2 this case;

3  
4 13. Whether Utility deliberately tried to embarrass a case witness by mailing copies of  
5 irrelevant court matters to a party's members

6 Swing First suggests that it is premature to award Utility a CC&N extension until these issues  
7 have been fully addressed in the rate-case docket.

8 RESPECTFULLY SUBMITTED on February 26, 2009.  
9

10  
11 

12  
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21 **Original** and 13 copies filed  
22 on February 26, 2009, with:

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24 Docket Control  
25 Arizona Corporation Commission  
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27 Phoenix, Arizona 85007  
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29 **Copy** of the foregoing delivered  
30 on February 26, 2009, to:

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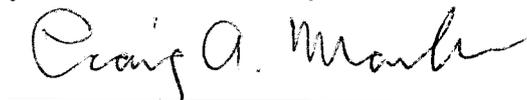
  
47 Craig A. Marks

Exhibit DA-7

# Tribune

EAST VALLEY • SCOTTSDALE

October 28, 2008

## State: Utility violating rules on sewage sludge

By Jason Massad  
Tribune

Johnson Utilities has been burying potentially dangerous sewage sludge near one of its wastewater treatment plants in violation of state rules, according to environmental regulators.

Johnson Utilities works on disinfecting wash [<http://www.eastvalleytribune.com/story/125918>]  
Johnson Utilities loses in land dispute ruling [<http://www.eastvalleytribune.com/story/124789>]  
Johnson Utilities ordered to clean up wash [<http://www.eastvalleytribune.com/story/120975>]

Officials with the Arizona Department of Environmental Quality showed up at a Johnson Utilities sewage plant nine miles southeast of Queen Creek in late September on an unannounced inspection that was launched after an anonymous complaint, according to DEQ records.

They found sewage sludge that would fill half a backyard swimming pool. About 34,713 gallons of the sludge was dumped in various trenches that also held construction debris.

Pictures taken at the scene show houses near uncovered trenches that contain sludge at Johnson Utilities Site 11 sewage plant.

The Department of Environmental Quality last week issued two violation notices and listed 15 separate infractions.

The infractions included failure to ensure that the sludge did not contaminate underground water supplies and failure to test the sludge - also called biosolids - for contaminants.

It's not the only time Johnson has run afoul of DEQ this year. The utility spilled raw sewage in May in a portion of Queen Creek Wash, polluting it for several months before it was disinfected.

"Biosolids are a potential human health hazard when not properly managed," wrote Mark Shaffer, spokesman for DEQ in an e-mail. "They are also very high in nutrients that might pollute drinking water supplies."

Sewage sludge is the byproduct of treating sewage and can contain infectious germs, toxins, heavy metals and nitrogen, according to the federal Environmental Protection Agency.

Johnson Utilities has been disposing of the sludge in landfills under a permit issued by DEQ and is not allowed to dispose or bury sludge at the site it was found.

However, in this instance, Johnson Utilities was simply storing sludge from some of the utility's other wastewater treatment plants at the Section 11 facility, said Lee Stein, an attorney with Perkins, Coie, Brown and Bain, which is representing Johnson.

Johnson Utilities was considering an agreement with another company to transport the sludge to be used as fertilizer on low-value crops - a growing, yet controversial trend in the waste management industry, Stein said.

The business venture didn't end up happening, however. Stein said that since the sludge came from other sewage plants and not the Site 11 facility, it didn't violate any state permitting rules.

Federal guidelines define "temporary storage" of sludge as less than two years, Stein's firm wrote in response to DEQ. "The biosolids in question were stored only for a few months earlier this year," says the response.

"I think ADEQ misunderstands ... they were not biosolids that were produced at the facility," Stein said. "There's a distinction between storing solids from this facility and storing solids from other facilities."

The Department of Environmental Quality's first visit to the sewage plant, however, indicated something different.

Gary Larsen, a representative of the utility, showed ADEQ officials where the sewage sludge had been temporarily stored on the site. However, there were no indications that sludge had been stored there, according to ADEQ documents.

ADEQ inspectors asked to be shown an area where sludge seemed to be scattered on the 640-acre property. They found a large trench where concrete and plastic debris as well as sewage sludge had been dumped, the report says.

Inspectors also found a 6-foot-deep pit where they were standing on biosolids that had already been buried with 2 inches to 3 inches of soil.

After Larsen told the inspectors that a utility backhoe was not in service, the inspectors dug six soil samples and could smell the strong odor of sewage.

The samples will be tested for a host of contaminants, although the department's report says they already know the material is sludge.

Inspectors returned to the sewage plant in early October. Larsen told inspectors that Johnson Utilities had retained an attorney and that he couldn't answer any questions.

Stein said that all of the sludge was moved from the facility after the surprise inspection. He said there was no health risk associated with storing the sludge at the site.



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# Tribune

EAST VALLEY • SCOTTSDALE

June 27, 2008

## Johnson sues 2 San Tan women for defamation

By Sarah Boggan  
Tribune



**UNSAFE WATER:** Water sits at the bottom of Queen Creek Wash outside the Johnson Utilities water reclamation plant on June 17. A sign posted on a fence blocking access to the wash warns of the presence of *E. coli* in the water in the wash in Pinal County near Queen Creek.

Santan-area residents who have challenged developer George Johnson on the safety of their water and sewer are being sued by his company for defamation.

Residents to protest Johnson Utilities event [<http://www.eastvalleytribune.com/story/118801>]

Raw sewage spill irks Pinal residents [<http://www.eastvalleytribune.com/story/116767>]

Pinal County residents Bambi Sandquist and Kristi Fisher were named in a lawsuit filed by Johnson Utilities this week in Pinal County Superior Court. They are accused in the lawsuit of posting defamatory statements about Johnson Utilities on [www.newszap.com](http://www.newszap.com) [<http://www.newszap.com>]. The Web forum is run by Independent Newspapers of Arizona, which publishes the Queen Creek Independent newspaper.

Their postings were in regard to recent sewage spills from a Johnson Utilities facility that health officials say pose a public health hazard. State environmental and regulatory agencies are investigating the spills.

Sandquist posted that Johnson should pay restitution to people in the spill area, lower his water rates, which are some of the highest in the state, and require his utility to be regularly audited.

The lawsuit alleges Sandquist and Fisher posted pointed comments on the community Web site forum and helped organize a protest of a company "customer appreciation" event by carrying water bottles containing mock contaminated water, hoisting protest signs and distributing fliers to attendees.

The lawsuit says that the women used the Web site to "publicize that they intended to protest (Johnson Utilities) at the event, to disseminate water bottles bearing false and misleading labels, to wear gas masks and to carry baby dolls dyed blue."

Sandquist is also accused in the lawsuit of slandering the company during a recent local news broadcast about the spills that spewed more than 10,000 gallons of raw sewage into Queen Creek Wash and the nearby Pecan Creek development. To illustrate her concern for potential harm to the company's more than

20,000 customers, Sandquist placed a gas mask on a baby doll for the cameras.

"Is this so bad that we have to put gas masks on our children?" Sandquist asked in an interview Friday.

Sandquist said she was surprised by the lawsuit. She didn't think company owner Johnson would "go after the little guy."

Fisher could not be reached for comment Friday.

Arizona State University journalism professor Stephen Doig said the lawsuit treads on new territory.

"What can be said on blogs and boards hasn't been litigated heavily," Doig said. "There's a world of trouble for people who don't understand that when they make potentially libelous utterances on the Internet they can be held liable."

As a public figure, Scottsdale developer Johnson would have a high burden of proof that his reputation has been stained by an effort to deliberately spread untruths on the Internet, he said.

The lawsuit could affect the willingness of residents to publicly talk about the issue, Doig said.

"All it takes is a hundred dollars to file a lawsuit," he said. "All of a sudden that can be a chilling effect when a process server hits a (citizen) with a lawsuit."

Sandquist said her comments on the Internet forum and the television news segment are protected under the First Amendment, and after recent problems with the utilities, residents have rallied to get answers.

Sandquist is encouraging her neighbors to attend an Arizona Corporation Commission meeting next week where commissioners are reviewing an application to expand the area where Johnson Utilities provides water and wastewater service.

Johnson has come under fire from ACC members who have expressed concern that the utility has spilled sewage and that it failed to build certain parts of its infrastructure to state environmental specifications.

Commissioner Bill Mundell said they will take public comments on the issue.

Johnson Utilities Vice President Brian Tompsett could not be reached for comment Friday.



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