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ARIZONA CORPORATION COMMISSION

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Revised June 24, 2008
Corrected attachment—ADEQ Notice of Violation
June 10, 2008

Chairman Gleason
Commissioner Hatch-Miller
Commissioner Mayes
Commissioner Pierce

Re: Application of Johnson Utilities, LLC for an increase in its water and wastewater rates for customers within Pinal County; Docket No. WS-02987A-08-0180

ADEQ Notice of Violation to Johnson Utilities, LLC

Dear Colleagues:

As you know, the Arizona Department of Environmental Quality ("ADEQ") issued a Notice of Violation ("NOV") to Johnson Utilities, LLC on Friday, June 5, 2008. The NOV was issued for the sanitary sewer overflows ("SSOs") from the Pecan Water Reclamation Plant ("WRP") during the weekend of May 17-18.

On page 2 of the NOV, the second alleged violation caught my attention. According to the NOV, the lift station at the Pecan WRP was approved based on an engineering design report that described the installation of two 75 horsepower pumps. However, at the time of the SSOs, 35 horsepower pumps were operating at the lift station. I would like to know why that was the case and if the difference in pumps was a contributing factor to the SSOs.

Johnson Utilities has filed a rate case as ordered by this Commission. While the filing has not yet been found sufficient by Staff, I think that ADEQ's NOV and the Company's response should both be filed in that docket¹, as well as any subsequent documentation regarding the NOV. It is my understanding that the Pecan WRP is not currently in the Company's rate base. However, the discrepancy between ADEQ records and the actual plant raises a red flag in my mind and may justify a higher level of scrutiny of the Company's plant in the rate case.

¹ Docket No. WS-02987A-08-0180.

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Depending upon the pace at which the rate case progresses, it may become necessary for the Company to provide answers to this Commission at a Special Open Meeting.

Thank you for your attention to this matter.

Sincerely,



William A. Mundell, Commissioner
Arizona Corporation Commission

cc: Brian McNeil
Rebecca Wilder
Ernest Johnson
Lyn Farmer
Janice Alward
Johnson Utilities, LLC
Steve Owens, ADEQ



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007
(602) 771-2300 www.azdeq.gov



Stephen A. Owens
Director

CERTIFIED MAIL
Return Receipt Requested

Case ID #: 97512

June 5, 2008

Johnson Utilities, LLC
Attention: Brian Tompsett
5230 E Shea Blvd
Scottsdale, AZ 85254-5750

Subject: Pecan Water Reclamation Plant, Place ID 18583
28539 N Gantzel Rd / Queen Creek, AZ 85242

NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Johnson Utilities, LLC as the owner/operator of Pecan Water Reclamation Plant has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during an inspection completed on May 20, 2008.

I. LEGAL AUTHORITY and NATURE OF ALLEGED SIGNIFICANT VIOLATION(S)

1. **A.R.S. § 49-255.01(A)**

Addition of a pollutant to navigable waters from a point source without a permit.

During the weekend of May 17 and 18, 2008 the Pecan Water Reclamation Plant (WRP) had two sanitary sewer overflows (SSOs) with a combined estimate of 10,000 gallons or more of untreated raw sewage through a spillway into Queen Creek.

2. **A.R.S. § 49-241(A)**

Discharge without an Aquifer Protection Permit.

During the weekend of May 17 and 18, 2008 the Pecan WRP had two SSOs with a combined estimate of 10,000 gallons or more of untreated raw sewage discharged into Queen Creek.

3. **A.A.C. R18-11-109(A)**

Violation of the numeric surface water quality standard for E. coli.

During the weekend of May 17 and 18, 2008 the Pecan WRP had two SSOs that discharged raw sewage to a body of standing water in Queen Creek. Sampling of the standing water by ADEQ revealed levels of E. coli at >1600 c.f.u./100ml. The single sample maximum numeric surface water quality standards for E. coli are 235 c.f.u./100ml for full body contact and 576 c.f.u./100ml for partial body contact.

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II. LEGAL AUTHORITY and NATURE OF OTHER ALLEGED VIOLATION(S)

1. **Permit 41570 - P1053285, Section 2.6.5.3**

Failure to notify ADEQ within 24 hours of a discharge of a non-hazardous material which a) has the potential to cause an AQL exceedance, or b) could pose an endangerment to public health or the environment.

Johnson Utilities failed to notify ADEQ within 24 hours after a discharge of raw sewage from the Pecan WRP to Queen Creek of approximately 6,000 gallons on May 17, 2008. ADEQ was notified of the discharge by e-mails from local residents. Johnson Utilities staff confirmed the discharge on May 19, 2008, after receiving an e-mail inquiry from ADEQ staff.

2. **Permit 41570 - P105324, Section 2.2.1**

Failure to comply with an engineering design report approved by ADEQ and incorporated by reference in the aquifer protection permit.

The lift station at the Pecan WRP was approved by ADEQ under file number 2004-0214 with plans submitted on February 14, 2004. The referenced "as built" describe the installation of two 75 HP Aurora Pumps (or equivalent) capacity. Johnson Utilities officials verbally reported that 35 HP Flygt pumps were operational in the liftstation at the time of the May 17 and 18, 2008 SSOs. Johnson Utilities officials reported that one of the 35 HP Flygt pumps was replaced with a 47 HP Flygt Pump after the May 17 and 18, 2008 SSO events. JU officials advised that the liftstation had originally been equipped with two 20 or 25 HP Aurora pumps that were upgraded about two years ago with 35 HP Flygt Pumps.

3. **Permit 37536 - AZ0025445, Part II, Section C**

Failure to orally report to ADEQ within 24 hours noncompliance that may endanger the environment or human health.

Johnson Utilities failed to orally report to ADEQ within 24 hours after a discharge of raw sewage from the Pecan WRP to Queen Creek of approximately 6,000 gallons on May 17, 2008. ADEQ was notified of the discharge by e-mails from local residents. Johnson Utilities staff confirmed the discharge on May 19, 2008, after receiving an e-mail inquiry from ADEQ staff.

III. DOCUMENTING COMPLIANCE

1. Within 7 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or commence twice weekly sampling of the standing water in Queen Creek at the discharge site for E coli and continue twice weekly sampling until at least two consecutive samples taken at least 24 hours apart are below the Surface Water Quality Standard for Partial Body Contact for E coli. The results of each sampling event must be forwarded to ADEQ within 24 hours of receipt from an Arizona state certified laboratory. During the period of twice weekly sampling pursuant to this Compliance Condition, maintain or replace the signs posted pursuant to ADEQ's letter to Johnson Utilities dated May 22, 2008 so they are visible to the public at access points to the standing water in Queen Creek.

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2. Within 14 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or a list of all sanitary sewer overflows (SSOs) that occurred since January 1, 2007 related to the Pecan Water Reclamation Plant (WRP) or sewer collection systems that flow into the Pecan WRP. For each SSO, provide detail regarding the volume of the discharge, the method of calculating the volume, the location of the discharge, the actions taken by Johnson Utilities to address the discharge and the cause of the discharge.
3. Within 14 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or a report for each sanitary sewer overflow that occurred on May 17 and 18, 2008. Each report should include the following information: date, time (beginning and end) and location of the SSO; how and when Johnson Utilities became aware of the SSO; estimated quantity discharged; method of estimating the quantity; volume and method of recovery; method, location and quantity of disinfection products used; any human exposure to discharged materials; and cause of SSO.
4. Within 30 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or written verification with photos that the liftstation has been upgraded with two pumps of at least 75 horsepower as described in APP P-105324 and as built drawings submitted as part of the permit.

IV. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality, Attention: William J. (Bill) Hare, Water Quality Field Service Compliance Unit, 1110 W Washington St, Phoenix, AZ 85007 MC: 5415B-1

V. STATEMENT OF CONSEQUENCES

Significant Violations

1. The time frames within this Notice for achieving and documenting compliance for the violation(s) alleged in Section I of this Notice are firm limits. Failure to achieve or document compliance for the violation(s) alleged in Section I of this Notice within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames for achieving and documenting compliance for the violation(s) alleged in Section I of this Notice only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.

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2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in Section I of this Notice as allowed by law.

Other Violations

3. ADEQ may take any enforcement action authorized by law for the violation(s) alleged in Section II of this Notice, if the violation(s) are not corrected, or if ADEQ determines that the violation(s) have not been corrected in the time frames within this Notice.

VI. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact William J. (Bill) Hare at (602) 771-4838.

John T. Gibbons, Manager
Water Quality Field Service Compliance Unit

William J. (Bill) Hare
Water Quality Field Service Compliance
Unit