

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

THE BOARD OF COUNTY COMMISSIONERS)
OF JOHNSON COUNTY, KANSAS, AS THE)
GOVERNING BODY OF THE JOHNSON)
COUNTY UNIFIED WASTEWATER DISTRICTS)

Plaintiff,)

vs.)

Defendants.)

Case No. _____
Court No. _____
K.S.A. Chapter 60

PETITION FOR ORDER COMPELLING COMPLIANCE

COMES NOW the Plaintiff Board of County Commissioners of Johnson County, Kansas, (hereinafter referred to as the "Board"), as the Governing Body of the Johnson County Unified Wastewater Districts, (hereinafter referred to as the "Dis-

tricts"), and for its cause of action against Defendants states and alleges as follows:

1. This action is brought pursuant to K.S.A. 60-901 et seq.

2. Johnson County, Kansas, is a municipal corporation and political subdivision of the State of Kansas pursuant to K.S.A. 19-101 et seq.

3. The Board of County Commissioners is the Governing Body of Johnson County, Kansas, and the Johnson County Unified Wastewater Districts, (which is located within the boundaries of Johnson County , Kansas), pursuant to K.S.A. 19-101a et seq. and Charter Resolution 29-92 adopted February 20, 1992.

4. The Defendants are residents of and/or own real estate located within Johnson County, Kansas, and may be served at the addresses set forth on Schedule "A" attached to this Petition and incorporated by reference herein.

5. The Board, as the Governing Body of the Districts, has the authority to exercise such powers of local legislation and administration as may be necessary and convenient for the purpose of providing sewer services and governing the operation and transaction of the business of the Districts pursuant to K.S.A. 19-101a et seq. and Charter Resolution 29-92 and may adopt any rule, regulation, standard limitation or requirement which may be necessary for the efficient and economical operation of the Districts pursuant to Section 2(N) of Charter

Resolution 18-84 adopted June 7, 1984, as subsequently amended and superseded by Section 4(K) of Article I of Charter Resolution No. 29-92 adopted February 20, 1992.

6. Pursuant to the above-referenced authority, and in compliance with state and federal environmental protection regulations, the Board adopted on October 3, 1985, by Resolution No. W.D. 85-96, a Program for the Reduction of the Number of Private Sector Infiltration and Inflow Sources into the Sanitary Sewer System, which was subsequently superseded, amended and codified by the Johnson County Code of Regulations for Private Infiltration and Inflow, 1992 Edition, (hereinafter referred to as the "Code"), adopted on June 4, 1992, by Resolution No. W.D. 92-22 (the program as established under both Resolutions is hereinafter referred to as the "Johnson County Remediation Program").

7. The purpose of the Johnson County Remediation Program is to reduce or eliminate the introduction of stormwater into the sewer system by prohibiting the connection of roof downspouts, interior or exterior foundation drains, area-way drains, or other sources of surface runoff or ground water directly to a public sanitary sewer or to a building sewer or building drain which is connected to a public sanitary sewer. Such stormwater/groundwater has an adverse impact on the effective treatment of wastewater, creates conditions that pollute waterways, and poses a direct threat to the public

health and safety by causing sewer back-ups and by-passes as well as stream and ground pollution.

8. In order to assist in funding the Johnson County Remediation Program the Board applied for and received certain loans and grants from the Kansas Department of Health and Environment (hereinafter "KDHE") and the United States Environmental Protection Agency (hereinafter "EPA"), the terms of which require inspection and removal of prohibited private infiltration and inflow sources from the three oldest main sewer districts which have historically experienced the most frequent problems with sewer back-ups and by-passes due to excess infiltration and inflow of storm water into the sanitary sewer system - the Mission Township Main Sewer District No. 1, Indian Creek Main Sewer District No. 1, and the Shawnee and Mission Townships Turkey Creek Main Sewer District No. 1 (hereinafter referred to as the "Private Infiltration/Inflow Removal Program"). To date, approximately \$10,422,942.00 has been expended under the Private Infiltration/Inflow Removal Program which is expected to be completed by January 1, 1995. From a total of 51,382 buildings requiring inspection, 51,288 have been inspected voluntarily (approximately 99%), with disconnection of 14,758 prohibited sources of infiltration and inflow representing a reduction of approximately 57,000,000 gallons of water per day based upon a one year rain event. Out of the 51,288 buildings inspected

thus far, approximately 25% have been found to have a prohibited source of infiltration or inflow requiring disconnection.

9. In order to determine whether prohibited sources of inflow and infiltration exist, Section 3, Article 2, Chapter 3 of the Code authorizes the Administrator of the Districts and other designated Code Enforcement Officers to enter upon and inspect sewer facilities on private property at a reasonable time and upon reasonable notice to the property owner.

10. Section 5, Article 2, Chapter 2 of the Code further provides that no person shall willfully obstruct or interfere with such Code Enforcement Officers in the performance of their official duties nor shall any person refuse or obstruct their lawful access and entry upon any property for the purpose of inspection of the premises or property for compliance with the provisions of the Code.

11. In the event prohibited sources of inflow and infiltration are found to exist, Section 2, Article 2, Chapter 2 of the Code further prohibits the property owner from refusing to disconnect such sources from the District's sanitary sewer system.

12. Defendants each hold an ownership interest in improved real estate which is subject to the inspection and remediation provisions of the Code. Attached hereto as **Schedule "A"** and incorporated herein by reference is a list of Defendants' properties requiring inspection including address-

es compiled from Johnson County Unified Wastewater Districts records.

13. Despite repeated written requests from Code Enforcement Officers mailed to Defendants to set up a mutually convenient time to inspect Defendants' Sewer Facilities to determine whether prohibited inflow and infiltration sources exist, (the most recent inquiries having been mailed subsequent to February of 1994), Defendants have totally ignored such requests and have refused to allow voluntary access for inspection purposes.

14. Because of the Defendants' refusal to allow voluntary inspections, it has become impossible for the Districts to complete its inspection and remediation duties as required under the Code and the terms of the EPA and KDHE loan and grant agreements for which Plaintiff lacks an adequate remedy at law.

15. Section 3, Article 2, Chapter 3 of the Code authorizes the Administrator to seek lawful Orders to compel access whenever such access is denied, and Section 10, Article 2, Chapter 3 of the Code further authorizes the commencement of civil proceedings within the District Court of Johnson County, Kansas, to obtain an Order of abatement, mandatory or prohibitory injunction, or such other relief as may be legally authorized to enforce the intent, purpose and provisions of the Code.

WHEREFORE, the Plaintiff prays for the issuance of an Order compelling Defendants to comply with the provisions of the Johnson County Code of Regulations for Private Infiltration and Inflow, 1992 Edition, including but not limited to the following:

- (a) That Defendants be compelled to allow Code Enforcement Officers reasonable access to their properties during normal business hours for the purpose of conducting inspections of sewer facilities thereon to determine whether prohibited inflow and infiltration sources exist.
- (b) That in the event such prohibited connections are discovered during inspection, that the Defendants be directed to abate such violations and to take such remedial actions as are necessary to bring their property into full compliance with the Code.
- (c) For such further or other relief as the Court may determine just.

Respectfully Submitted,

Roger L. Tarbutton #9730
Assistant County Counselor
Johnson County Square
111 S. Cherry St., Suite 3200
Olathe, KS 66061-3441
(913) 764-8484 Ext. 5385
ATTORNEY FOR THE BOARD OF COUNTY
COMMISSIONERS OF JOHNSON COUNTY,
KANSAS

VERIFICATION

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

Douglas L. Smith of lawful age, being first duly sworn on oath, states that he is the Administrator of the Johnson County Unified Wastewater Districts; that he has authority to make this verification on behalf of the Johnson County Unified Wastewater Districts; that he has read the foregoing Petition, knows the contents thereof and that the statements and allegations contained therein are true and correct.

Douglas L. Smith
Douglas L. Smith, Administrator,
Johnson County Unified
Wastewater Districts

Subscribed and sworn to before me this 28 day of ~~February~~, 1994.

July CAM
11/28/94

Carolyn Mounce
Notary Public

