

Missouri Clean Water Commission Meeting
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Creek Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri

January 4, 2012

Toulon Heights Subdivision
Jefferson County, MO-0089729

Background: The Toulon Heights Subdivision (Subdivision) is near the 2900 block of Old Highway A in the city of Festus, Missouri. Toulon Homeowners Association (Association) oversees the operation and maintenance of the Subdivision and is a registered fictitious name but is not a registered corporation in good standing with the Secretary of State. The Subdivision is serviced by a two-cell lagoon where sludge is retained which has a design flow of 3,400 gallons per day with a design population equivalent of 34 and approximately eight (8) residences connected to the wastewater treatment facility (facility).

On October 26, 2010, February 3, 2011, and March 1, 2011, Department staff performed environmental investigations at the facility, and observed operation and maintenance issues that prevent the facility from complying with the Missouri Clean Water Law (Law). Since November 16, 2010, the Department issued the Subdivision two (2) Notice of Violations for failure to submit Discharge Monitoring Reports (DMR) for the 1st, 2nd, 3rd, and 4th quarters of 2010.

Issue: On July 13, 2011, the Department sent a certified letter to the eight (8) homeowners in the Subdivision in an attempt to resolve past violations of the Law and its implementing regulations through an out-of-court agreement. Mr. Mark Reiker initiated a conversation by telephone with Department staff on July 26, 2011. During this conversation, Department staff explained the steps required to bring the Subdivision back into compliance with the Law. Mr. James Bequette initiated a conversation by telephone with Department staff on July 28, 2011, and again on August 9, 2011. During this conversation, Department staff explained the steps required to bring the Subdivision back into compliance with the Law and Mr. Bequette stated that he would find and submit the 2010 DMRs and address the civil penalty. On September 7, 2011, the Department sent a certified letter to the eight (8) homeowners in the Subdivision summarizing the previous conversation with Mr. Bequette and in an attempt to resolve past violations of the Law and its implementing regulations through an out-of-court agreement. On October 7, 2011, the Department sent a certified letter to the eight (8) homeowners in the Subdivision informing them that the matter would be presented to the Clean Water Commission, during which time Department staff would recommend referral of the matter to the Attorney General's Office. To date, the Department has not reached an agreement with the homeowners of the Subdivision regarding the compliance issues or the civil penalty calculated for past violations of the Law.

Recommended Action: The Water Protection Program recommends that the Commission refer this matter to the Attorney General’s Office for appropriate legal action in order to pursue a civil penalty and/or seek any other appropriate form of relief.

Suggested Motion Language: “I move that the Commission refer this matter to the Attorney General’s Office for appropriate legal action in order to compel compliance, pursue a civil penalty, and/or seek any other appropriate form of relief.”

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Case Summary Information

Case Name: Toulon Heights Subdivision

Facility name(s) – List all current names of responsible parties (owner/operator) for actions at this site):

1. Thomas Frasca - President of the Homeowners Association
2. James G. Bequette - Homeowner
3. Thomas V. Dressel - Homeowner
4. Donald G. Jr. & Amy L. Echrich - Homeowners
5. Sandra Mach - Homeowner
6. Donna L. Rayfield - Homeowner
7. Mark A. Reiker - Homeowner
8. Michael S. Tullock - Homeowner

Facility address, including county and contact information:

Toulon Heights Subdivision
2900 Block of Old State Road A
Festus, Jefferson County
Missouri 63028

1. Thomas & Jonelle Frasca
2900 Old State Road A
Festus, MO 63028
2. James G. Bequette
2944 Old State Road A
Festus, MO 63028
636-208-9555
3. Thomas V. Dressel
2924 Old State Road A
Festus, MO 63028
4. Donald G. Jr. & Amy L. Echrich
2930 Old State Road A
Festus, MO 63028
5. Sandra Mach
2920 Old State Road A
Festus, MO 63028
6. Donna L. Rayfield

2934 Old State Road A
Festus, MO 63028

7. Mark A. Reiker
1370 Reiker Ford RD
ST Clair, MO 63077
314-630-5212

2916 Old State Road A
Festus, MO 63028

8. Michael S. Tullock
2910 Old State Road A
Festus, MO 63028

Program(s):

Water Protection Program (WPP)

Program Contact(s)/Regional Contact(s), with phone numbers:

1. Bobbie Pennington, Environmental Specialist, Water Protection Program,
bobbie.pennington@dnr.mo.gov (573)522-1120
2. Paul Dickerson, Unit Chief, Water Protection Program,
paul.dickerson@dnr.mo.gov (573)751-7624
3. Joe Twellman, Environmental Specialist, Saint Louis Regional Office,
joe.twellman@dnr.mo.gov (314)416-2960
4. Mike Struckhoff, Director, Saint Louis Regional Office,
mike.struckhoff@dnr.mo.gov, (314)416-2960

Description of Facility and Situation:

The Toulon Heights Subdivision (Subdivision) is near the 2900 block of Old Highway A in the city of Festus, Missouri. The Toulon Homeowners Association (Association) oversees the operation and maintenance of the Subdivision and is a registered fictitious name but is not a registered corporation in good standing with the Secretary of State. The Subdivision is serviced by a two-cell lagoon where sludge is retained which has a design flow of 3,400 gallons per day with a design population equivalent of 34 and approximately eight (8) residences connected to the wastewater treatment facility (WWTF).

Since November 16, 2010, the Department conducted four (4) inspections of the facility. During these inspections, Department staff observed operation and maintenance deficiencies which include the leaking of the influent and effluent pipes, deep-rooted vegetation growing on the

lagoon berms, proper warning signs were not provided, inadequate fencing and the gate was not lockable, failed to provide an all weather access road provided from a public right-of-way to the treatment facility, failed to provide a minimum of two (2) feet of freeboard, and the inner slopes of the lagoon berm were not maintained with a 3:1 ratio. A review of the required quarterly Discharge Monitoring Reports (DMR) by Department staff found that the Department has not received DMRs for the 1st, 2nd, 3rd, and 4th, quarters of 2010 and the 3rd quarter of 2011, as required by Missouri State Operating number Permit (Permit) MO-0089729. The Department issued two (2) Notices of Violation to the Toulon Heights Subdivision on November 16, 2010, and March 21, 2011. The facility was referred to the Compliance and Enforcement Section on March 22, 2011.

Responsible Party(s) (specify owner, operator, other [etc.]) **and contact information if different from above:**

Law(s), Regulation(s) and Permit Conditions Violated: For each violation note starting some time before { } date and ending sometime before { }, or note "continuing."

1. Failed to submit discharge monitoring reports for the year 2010 as required in part "A" of Permit number MO-0089729 in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1.
2. Failure to maintain a permanent organization to serve as the continuing authority for the operation, maintenance, and modernization of the wastewater treatment facility in violation of 644.076.1, RSMo, and 10 CSR 20-6.010(3)
3. Failed to operate and maintain facilities to comply with the Missouri Clean Water Law and Permit number MO-0089729 in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

Relief Requested:

- Civil action for compliance and penalties (if injunction requested, please provide proposed compliance schedule)**
- Temporary Restraining Order**
- Coordination with federal government on criminal action**
- Other, specify:**

Permit(s) Involved, including type and permit number:

Permit number MO-0089729 was issued to the Toulon Heights Subdivision on December 2, 2005, and expired by its own terms on December 1, 2010. On April 1, 2011, the Department received a renewal application for Permit number MO-0089729 which was returned to applicant on August 26, 2011 due to a lack of a continuing authority as required by Sections 644.051.10 and 644.076.1, RSMo, and 10 CSR 20-6.010(5)(C) and 10 CSR 20-6.010(3)(B).

Other Program Involvement (if applicable):

Other Agency Involvement (if applicable):

Most Recent Significant Action by Department or Responsible Party:

Since July 13, 2011, the Water Protection Program, Compliance and Enforcement Section attempted to negotiate an Abatement Order on Consent (AOC) with the homeowners of the Toulon Heights Subdivision. To this end, the Department sent an enforcement letter to the homeowners on July 13, 2011. Mr. Mark Reiker telephoned Ms. Pennington on July 26, 2011. Mr. James Bequette telephoned Ms. Pennington on July 28, 2011, and Ms. Pennington and Mr. Paul Dickerson telephoned Mr. Bequette on August 9, 2011. During these telephone conversations, Department staff explained that Toulon Heights Subdivision needed to submit DMRs for 2010 and address the operation and maintenance issues noted by Department staff during compliance inspections. A second enforcement letter was sent to the homeowners, attempting to negotiate an AOC. To date, the Department has not received the missing DMRs or a response to the Department's offer.

Penalty Estimate:

\$2,534.00

Other Significant Aspects of the Case:

CONTACT INFORMATION:

• **Department Staff – inspectors, other field staff, case managers and others involved in developing the referral. Name, position, e-mail address and phone number:**

1. Bobbie Pennington, Environmental Specialist, Case Manager, Water Protection Program, bobbie.pennington@dnr.mo.gov (573)522-1120
2. Paul Dickerson, Unit Chief, Water Protection Program, paul.dickerson@dnr.mo.gov (573)751-7624
3. Joe Twellman, Environmental Specialist, Inspector, Saint Louis Regional Office, joe.twellman@dnr.mo.gov (314)416-2960
4. Mike Struckhoff, Director, Saint Louis Regional Office, mike.struckhoff@dnr.mo.gov, (314)416-2960

• **Facility Owner(s) – for all defendants, include name, title, physical and mailing addresses and telephone numbers:**

1. Thomas & Jonelle Frasca
2900 Old State Road A
Festus, MO 63028
2. James G. Bequette
2944 Old State Road A
Festus, MO 63028

636-208-9555

3. Thomas V. Dressel
2924 Old State Road A
Festus, MO 63028
4. Donald G. Jr. & Amy L. Echrich
2930 Old State Road A
Festus, MO 63028
5. Sandra Mach
2920 Old State Road A
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6. Donna L. Rayfield
2934 Old State Road A
Festus, MO 63028
7. Mark A. Reiker
2916 Old State Road A
Festus, MO 63028

1370 Reiker Ford RD
ST Clair, MO 63077
314-630-5212
8. Michael S. Tullock
2910 Old State Road A
Festus, MO 63028

- **Facility Operator(s):**

Patrick Boos Services hired to monitor wastewater

- **Others (e.g., employees, neighbors, first responders or staff of other state, local or federal agencies):**

Attachments:

- ✓ **Permit and permit application**
- ✓ **NOVs and LOWs**
- ✓ **Documentation of any site visits, including Environmental Assistance Visits**
- ✓ **Reports of inspections within last five years**
- ✓ **Penalty and penalty calculation**
- ✓ **All correspondence between Department and defendant**
- ✓ **All emails and phone logs**

- ✓ **Copies of database entries from county recorder's office**
- ✓ **Secretary of State information documenting correct name of corporation, form of corporation or fictitious name registration, including information regarding registered agent**
- ✓ **Sample Results**
- ✓ **Photographs (electronic or color)**
- ✓ **Evidence of Environmental Impact**
- ✓ **Documentation of any Settlement Negotiations or In-Person Meetings**
- ✓ **Witness names and contact information (at least phone number)**
- ✓ **Map of the Site**