

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI**

IN THE MATTER OF:

Spring Lake Estates Subdivision
Wastewater Lagoon

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) No. 2012-WPCB-1186
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SERVE:

Ms. Betty Brooks, Secretary / Treasurer
Spring Lake Estates Homeowner's Association

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuance of this Abatement Order on Consent (AOC) number No. 2012-WPCB-1186 by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because the Department believes that the wastewater treatment lagoon (lagoon) serving Spring Lake Estates Subdivision (Subdivision) is in violation of the Missouri Clean Water Law (Law) and its implementing regulations. This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the Law. Litigation may occur without further notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements of the Law, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Spring Lake Estates Homeowner's Association (Association) of liability for, or preclude the Department from, initiating a judicial enforcement action to recover civil penalties for any, including future, violations of the Law and the violations cited in this AOC, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. The Subdivision is a residential housing development consisting of approximately twenty-five (25) lots, located in Jackson, Missouri. The Subdivision is served by a two (2)-cell facultative lagoon located in the SW ¼, SW ¼, Section 30, Township 32 North, Range 13, Cape Girardeau County. The lagoon is operated by the Association.

The lagoon has a design flow of 12,000 gallons per day (gpd) and an actual flow of 7,000 gpd. Sludge is retained in the lagoon, which has a design sludge production of 4.5 dry tons per year. The lagoon operates pursuant to Missouri State Operating Permit (MSOP) number MO-0058459, which became effective August 29, 2008, and expires August 28, 2013. MSOP number MO-0058459 establishes effluent limitations for the lagoon, and requires the Association to collect a sample of effluent and submit analytical results to the Department on quarterly Discharge Monitoring Reports (DMRs).

- B. MSOP number MO-0058459 also includes a Schedule of Compliance (SOC) which required the Association to complete upgrades that would enable the lagoon's effluent to comply with final effluent limits for Fecal Coliform. The SOC required the Association to submit a preliminary engineering report by May 29, 2009, which recommends upgrades to meet effluent limits. The SOC also required the Association to apply for a construction permit after the preliminary engineering report was approved by the Department. Final Fecal Coliform limits for the lagoon took effect August 29, 2011.
- C. The receiving stream for the lagoon is a tributary to Hubble Creek. Hubble Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (26), RSMo.
- D. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(23), RSMo.
- E. DMRs submitted to the Department by the Association document that the effluent failed to comply with permitted limits for Total Suspended Solids during the first and third quarters of 2010 and the first, second, and third quarters of 2011, and Biochemical Oxygen Demand during the first quarter of 2011. The Department issued Letter of Warnings to the Association for the effluent violations documented in the first quarter of 2010 and the first quarter of 2011.
- F. On January 23, 2012, the Department issued Notice of Violation (NOV) number 19083SE to the Association for failure to comply with the SOC in MSOP number MO-0058459.
- G. Section 644.076.1, RSMo, makes it unlawful to violate the Law and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

III. CONCLUSIONS OF LAW

Violations of the Law and its implementing regulations alleged herein and found to have been committed by the Association at the lagoon are as follows:

1. Failed to comply with the effluent limits contained in Part "A" of MSOP number MO-0058459 in violation of Sections 644.051.1(3) and 644.076.1, RSMo; and
2. Failed to submit reports and complete upgrades to the facility as required in part "B", Standard Conditions, and part "D", Schedule of Compliance, of MSOP number MO-0058459 in violation of Sections 644.076.1, RSMo, 10 CSR 20-6.010(7)(A).

IV. AGREEMENT

- A. The Department and the Association desire to amicably resolve all claims that might be brought against the Association for the violations alleged above in Section III, Conclusions of Law, without the Association admitting the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of the Association under this AOC. If the Association sells or otherwise transfers the facility, then the Association shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of the Association under this AOC in writing. In such event, the Association shall provide 30 days prior written notice of such assumption to the Department.
- C. Within 60 days of the effective date of this AOC, the Association shall submit to the Department for review and approval, an engineering report and a complete application for a construction permit which includes plans and specifications. The engineering report's plans and specifications must be prepared by a professional engineer licensed to practice in the State of Missouri. The engineering report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8.020. The engineering report shall include a comprehensive evaluation of the current condition of the lagoon, and wastewater treatment options and recommendations that will enable the effluent to comply with applicable effluent limitations contained in MSOP number MO-0058459, including the final limitations for Fecal Coliform. The construction permit application and engineering report shall be submitted to the Department's Compliance and Enforcement section in the Water Pollution Control Branch at P.O. Box 176, Jefferson City, MO 65102.
- D. Within 15 days, the Association shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the construction permit and engineering report.

- E. On or before July 30, 2013, the Association shall complete construction in accordance with Department approved plans and specifications in the construction permit and achieve compliance with final effluent limitations of MSOP number MO-0058459.
- F. Within 15 days of completing construction, the Association shall submit a Statement of Work Completed form, signed, sealed and dated by a professional engineer registered in the State of Missouri certifying that the project was completed in accordance with Department approved plans and specifications, and a complete application for the modification of MSOP number MO-0058459 to reflect the lagoon's upgrades.
- G. Should the Association fail to meet the terms of this AOC, including the terms set out in Paragraph C, D, E, and F, the Association shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "*Cape Girardeau County Treasurer, as custodian of the Cape Girardeau County School Fund.*" Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

Accounting Program
 Missouri Department of Natural Resources
 P.O. Box 477
 Jefferson City, MO 65102-0176

- H. No portion of the stipulated penalties paid pursuant to this AOC may be used to reduce the Association's federal or state tax obligation.
- I. Nothing in this AOC forgives the Association from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forego pursuing by any legal means any noncompliance with the laws of the State of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those within are expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- J. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.

- K. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to the Association for its records.
- L. The Association shall comply with the Law, Chapter 644, RSMo, and its implementing regulations at all times in the future.

V. **RIGHT OF APPEAL**

By signing AOC No. 2012-WPCB-1186, the Association waives any right of appeal pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC No. 2012-WPCB-1186 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

VI. **CORRESPONDENCE AND DOCUMENTATION**

Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

Mr. Graham Freeman
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 25th day of July, 2012

John Madras

John Madras, Director
Water Protection Program
Missouri Department of Natural Resources

Agreed to and Ordered this 17th day of July, 2012

Betty Brooks, Treasurer / Secretary

Betty Brooks, Treasurer / Secretary
Spring Lake Estates Homeowner's Association

Agreed to and Ordered this 17 day of July, 2012


Richard Steffens, President
Spring Lake Estates Homeowner's Association

Copies of the foregoing served by certified mail to:

Ms. Betty Brooks, Secretary / Treasurer
Spring Lake Estates Homeowner's Association
162 David Drive
Jackson, MO 63755

CERTIFIED MAIL #

c. Ms. Diane Huffman
Chief, NPDES and Facilities Management Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII
901 North Fifth Street
Kansas City, KS 66101

Mr. Jackson Bostic
Southeast Regional Office
2155 North Westwood Boulevard
Poplar Bluff, MO 63901

Dr. Samuel M. Hunter, Chair
Missouri Clean Water Commission
P.O. Box 984
216 Tanner Street
Sikeston, MO 63801

Mr. Ben A. "Todd" Parnell, III, Vice-Chair
Missouri Clean Water Commission
Drury University
900 N. Benton
Springfield, MO 65802

Mr. John Cowherd, Commissioner
Missouri Clean Water Commission
1303 Deer Lane
Mount Vernon, MO 65712

Mr. Buddy Bennett, Commissioner
Missouri Clean Water Commission
7361 Summer Azure Lane
Higginsville, MO 64037

Mr. Samuel D. Leake, Commissioner
Missouri Clean Water Commission
41690 Harrison Trail
Perry, MO 63462

Ms. Wallis Warren, Commissioner
Missouri Clean Water Commission
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Mr. Dennis Wood, Commissioner
Missouri Clean Water Commission
P.O. Box 112
Kimberling City, MO 65686

