

IN THE CIRCUIT COURT OF MORGAN COUNTY, MISSOURI



STATE OF MISSOURI ex rel.,
Chris Koster, Attorney General of Missouri,
The Missouri Department of Natural Resources and
The Missouri Clean Water Commission,

Plaintiff,

vs.

DAN SPANBURG, Individually and
SPANBURG INVESTMENTS, LLC.,

Defendants.

Case #: 10MG-CC00002

JUDGMENT

WHEREUPON, on the 24th and 25th days of September, 2012, the above matter did come before this Court for trial. Plaintiff appeared by counsel Jennifer S. Frazier and Defendant Dan Spanburg appeared individually and as the corporate officer for Spanburg Investments LLC together with counsel, Aaron Ellsworth. Evidence was presented and the Court took the matter under advisement on September 25, 2012.

NOW ON THIS 5th DAY OF October, 2012, the Court again takes up this matter and having considered the evidence adduced at trial together with the pleadings herein, does hereby make the following findings:

1. The Court has jurisdiction over the subject matter herein and of the parties hereto. The subject matter of this action involves the Missouri Clean Water Law, Chapter 644, RSMo., and the regulations duly promulgated there under. The actions alleged in Plaintiff's Petition which give rise to this cause of action took place in Morgan County and, therefore, venue is proper in this Court pursuant to Section 644.076.1, RSMo.
2. Chris Koster is the duly elected, qualified and acting Attorney General of Missouri. The Attorney General is authorized to institute, in the name and on behalf of the State, all civil proceedings at law or in equity necessary to protect the rights and interests of

the State under Section 27.060 RSMo 2000. Section 644.076 RSMo of the Missouri Clean Water Law authorizes the Attorney General to bring this lawsuit.

3. The Missouri Department of Natural Resources (“Department”) is a duly authorized state agency created under Section 650.010 RSMo to administer the programs relating to environmental control and conservation, and to manage the natural resources of the State of Missouri.
4. The Missouri Clean Water Commission (the “Commission”) is a commission created by Section 644.021 RSMo, and is authorized to administer and enforce the Missouri Clean Water Law and its implementing rules and regulations.
5. Spanburg Investments, LLC is a Missouri Limited Liability Company authorized to do business in the State of Missouri.
6. Spanburg Investments, LLC owns approximately 19.5 acres known as the Wellington Woods Subdivision located on Wellington Lane, Laurie, Missouri. Spanburg Investments, LLC has owned the Wellington Woods Subdivision since at least September 17, 2008. The property is located in the Southeast Quarter of the Southwest Quarter, Section 29, Township 40 North, Range 17 West, Morgan County, Missouri. Wellington Woods Subdivision is a “residential housing development”, as that term is defined in Section 644.016(18), RSMo.
7. On December 17, 2008, the Department issued Missouri State Operating Permit (“MSOP”) No. MO-R10C389 to Dan Spanburg for the Wellington Woods Subdivision. The “Permit” authorized the discharge of storm water to an unnamed tributary to Brush Creek in accordance with Permit requirements. The Permit expired February 7, 2012 and has not been renewed.
8. Dan Spanburg is identified in the Permit as the owner of the Wellington Woods Subdivision facility and the continuing authority responsible for compliance with the requirements of the Permit.
9. This Court finds *Hammack V. Missouri Clean Water Commission*, 659 S.W.2d 597, 600 (Mo.App.1983), controlling and that although the unnamed tributary to Brush Creek is an intermittent dry stream it constitutes a waterway of the State as defined by Section 644.016(26) RSMo.

10. Sediment, soil runoff and soil and rock particulate matters are “water contaminants”, as that term is defined at Section 644.016(23) RSMo.
11. The Wellington Woods Subdivision is a “point source” as that term is defined at Section 644.016(24), RSMo.
12. Section 644.051.2 RSMo makes it “unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in this state that is subject to the standards, rules or regulations promulgated pursuant to Section 644.006 to 644.141 RSMo unless such person holds a Permit from the [Clean Water] commission, subject to such exceptions as the commission may prescribe by rule or regulation.”
13. Defendants operated a point source, Wellington Woods Subdivision, without a Missouri State Operating Permit, from September 17, 2008 through December 17, 2008. Defendants have maintained the point source, Wellington Woods Subdivision, without a Missouri State Operating Permit since February 7, 2012.
14. The Department notified Defendants that they were operating without a Permit on September 17, 2008, and October 17, 2008.
15. Defendants’ operation of a point source without a Permit constitutes a violation of Section 644.051.2 RSMo.
16. Pursuant to Section 644.051.1(3) RSMo it is unlawful to discharge any water contaminants into any waters of the state which exceed Permit provisions as established by the Clean Water Commission.
17. The Permit issued to Defendant Dan Spanburg contained standard conditions that imposed certain operating restrictions and requirements on Defendant Dan Spanburg and Defendant Spanburg Investments LLC as owners of the subdivision.
18. The primary requirement of the Permit is the development and implementation of a Storm Water Pollution Prevention Plan (“SWPPP”) that (a) incorporates required practices identified in the Permit, (b) incorporates erosion control practices specific to site conditions, and (c) provides for maintenance and adherence to the plan. The purpose of the SWPPP is to ensure the design, implementation, management, and maintenance of Best Management Practices (“BMPs”).

19. BMPs are techniques, measures or structural controls that are used for a given set of conditions to manage the quantity and improve the quality of storm water runoff in the most cost-effective manner. BMPs are intended to reduce the amount of sediment and other pollutants associated with land disturbance activities in storm water discharges, to ensure that discharges comply with the Missouri Water Quality Standards, and to ensure compliance with the terms and conditions of MSOPs.
20. Although Defendants took measures to implement BMPs for erosion and sediment control, sediment was discharged from the Permit site on or about February 27, 2009 and on or about June 4, 2009. This discharge was a direct result of the Defendants failure to implement and maintain adequate BMPs for erosion and sediment control as required by the Permit.
21. Defendants' failure to implement and maintain adequate BMPs for erosion and sediment control constitutes a violation of MSOP No. MO-R10C389, and Section 644.051.1(3) RSMo.
22. Under the Missouri Clean Water Law, "it is unlawful for any person to cause pollution of any waters of the State or to place or cause or Permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the State." Section 644.051.1(1) and 644.076.1 RSMo.
23. On or about February 27, 2009 and May 25 through June 4, 2009, Defendants caused and Permitted the discharge of sediment, soil runoff and soil and rock particulate matter from the Permit site which traveled downhill from the site along Chelsie Road to a point crossing Chelsie road ultimately being deposited in the bed of the unnamed tributary to Brush Creek. These deposits of sediment, soil and rock particulate were unsightly and not natural to the unnamed tributary to Brush Creek as observed by Jennifer Hoggatt. This Court finds therefore that these deposits altered a physical property of the unnamed tributary to Brush Creek and further finds that these deposits were reasonably certain to create a nuisance and had the potential to be harmful to aquatic life downstream, thus constituting pollution.
24. Defendants' actions in causing or Permitting water contaminants to be placed in a location where they were reasonably certain to cause pollution to waters of the state, constitute a violation of Sections 644.051.1(1) and 644.076.1 RSMo.

25. Under the Missouri Clean Water law, "it is unlawful for any person to discharge any water contaminants into waters of the state which reduce the quality of such waters below the water quality standards established by the [Clean Water] Commission." Section 644.051.1(2) and 644.076.01 RSMo.
26. The water quality standard applicable to all waters of the state at all times, as determined by the Clean Water Commission at Missouri State regulation 10 CSR 20-7.031(3), in part prohibit any water contaminant from preventing the waters of the State from meeting certain conditions, including:
- (A) Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses.
27. On February 27, 2009 and May 25 through June 4, 2009, Defendants discharged water contaminants in the form of sediment, soil runoff and soil and rock particulate matter from the Permit site into the unnamed tributary to Brush Creek in sufficient amounts to cause the formation of unsightly bottom deposits thereby violating the water quality standards prescribed by 10 CSR 20-7.031(3)(A).
28. Defendants' discharge of water contaminants from a water contaminant source, which reduced the quality of waters below the water quality standards established by the Missouri Clean Water Commission, constitutes a violation of Sections 644.051.1(2) and 644.076.1 RSMo.
29. Paragraph 10 of the REQUIREMENTS Section of Defendants' Permit concerns site inspection reports and states:
- The Permittee (or a representatives of the Permittee) shall conduct regularly scheduled inspections at least once per seven calendar days. These inspections shall be conducted by the person responsible for environmental matters at the site, or a person trained by and directly supervised by the person responsible for environmental matters at the site. For disturbed areas that have not been finally stabilized, all installed BMPs and other pollution control measures shall be inspected for proper installation, operation and maintenance. All storm water outfalls shall be inspected for evidence or erosion or sediment disposition. Any structural or maintenance problem shall be noted in an inspection report and corrected within seven calendar days of the inspection. If a rainfall event results in storm water runoff on-site, the BMPs must be inspected within a reasonable time period (not to exceed 48

hours) after the rainfall has ceased . . . Parts of the site that have been stabilized must be inspected at least once per month.

30. Subsequent to December, 2010, Defendants failed to conduct weekly, monthly or rainfall event site inspections at the Wellington Woods subdivision as required by the Permit.
31. Defendants' failure to conduct the inspections required by their Permit constitutes a violation of MSOP No. MO-R10C389, and 10 CSR 20-6.200 of the Missouri Clean Water Law.
32. Pursuant to Section 644.076.1 RSMo. Defendants are subject to the imposition of injunctive relief and a civil penalty not to exceed \$10,000 per day for each day, or part thereof, that each violation of the Missouri Clean Water Law occurred.
33. Defendant Dan Spanburg is the sole member of Spanburg Investments, LLC. Defendant Dan Spanburg exercised exclusive control over the operations of Spanburg Investments LLC and its day to day activities at the Permit site. Defendant Dan Spanburg controlled the land disturbance activities at the Permit site and either made all best management practices decisions or directed employees who made best management practices decisions at the Permit site in his absence. Defendant Dan Spanburg is liable in his individual capacity for the violations found herein.
34. Having considered the Defendants good or bad faith herein this Court finds that the Plaintiff has failed to provide evidence that Defendants acted in bad faith with regard to the violations found herein. This Court finds that Defendants did implement measures to attempt to control erosion and sediment from leaving the Permit site but on occasion were unsuccessful in doing so. The State has presented no evidence however that this failure was in any part occasioned by the bad faith of Defendants. The Court further finds that the State has presented no evidence of any financial gain which occurred to the Defendants from the operation of the Permit site or the failure to implement adequate or best management practices. The Court further finds that although there was some evidence of potential harm to the environment caused by the discharges found by this Court herein, that the State failed to introduce evidence of sufficient amounts of sediment being discharged from the Permit site to have caused toxicity to human, animal or aquatic life and therefore this Court finds the environmental harm

caused by the sediment discharge herein to have been minimal. The Court further finds that sediment is a naturally occurring substance which by the activities of the Defendants at the Permit site herein was discharged from the Permit site to the point of causing an alteration of the physical property of the unnamed tributary to Brush Creek. While this Court has noted the minimal impact on the environment caused by this discharge, the Court has nevertheless found it to be in violation of the Missouri Clean Water Act.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

Count I: Judgment is hereby entered in favor of Plaintiff and against Defendants Dan Spanburg and Spanburg Investments LLC. Defendants are hereby ordered to comply with the Missouri Clean Water Law, Chapter 644 RSMo and the Regulations duly promulgated there under concerning the Wellington Woods Subdivision Permit site according to the following compliance schedule:

- A. Defendants shall apply for and cause to be re-issued a Missouri State Operating Permit within 120 days of this Court's Judgment;
- B. Defendants shall achieve stabilization of the Permit site and termination of the Missouri State Operating Permit in accordance with all applicable Statutes, Rules and Regulations within two years of this Judgment.

Judgment is further entered in favor of the State of Missouri and against Defendants Dan Spanburg, and Spanburg Investments LLC, jointly and severally, for a civil penalty in the sum of \$10,000.00 for violations set forth in Count I of Plaintiff's Petition. This civil penalty shall be stayed and is hereby suspended for two years from the date of this Court's Judgment and shall further be permanently stayed so long as Defendants comply with the compliance schedule ordered herein.

Count II: The Court finds the issues in favor of Plaintiff and against Defendants Dan Spanburg and Spanburg Investments LLC. Judgment is entered in favor of the State of Missouri and against Defendants Dan Spanburg and Spanburg Investments LLC, jointly and severally, in the sum of \$1,000.00, to be paid within one year from the date of this Court's Judgment.

Count III: The Court finds the issues in favor of Plaintiff and against Defendants Dan Spanburg and Spanburg Investments LLC. Judgment is entered in favor of the State of Missouri against Defendant Dan Spanburg and Spanburg Investments LLC, jointly and severally, in the sum of \$1,000.00, to be paid within one year from the date of this Court's Judgment.

Count IV: The Court finds the issues in favor of Plaintiff and against Defendants Dan Spanburg and Spanburg Investments LLC. Judgment is entered in favor of the State of Missouri against Defendants Dan Spanburg and Spanburg Investments LLC, jointly and severally, in the sum of \$1,000.00, to be paid within one year from the date of this Court's Judgment.

Count V: The Court finds the issues in favor of Plaintiff and against Defendants Dan Spanburg and Spanburg Investments, LLC. Judgment is entered in favor of the State of Missouri against Defendants Dan Spanburg and Spanburg Investments LLC, jointly and severally, in the sum of \$1,000.00, to be paid within one year from the date of this Court's Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are permanently enjoined from further violating the Missouri Clean Water Law, Chapter 644 and its implementing regulations of the Permit site except for the compliance schedule ordered by this Court herein. Costs of this action are taxed against Defendants jointly and severally.


KENNETH M. HAYDEN
Circuit Judge, Division II
26th Judicial Circuit

**State of Missouri
County of Morgan**

I, CHERYL MORRIS, Clerk of the Circuit Court and for said County, hereby certify that the above is a true copy of the original Judgment as the same appears in my office in Case No. 010MB-CC00002.
WITNESS my hand as Clerk, and seal of said Court Done at the City of Versailles, Missouri, this 5th day of October 2012.


Cheryl Morris
Circuit Clerk
By  Sharon James Deputy