

IN THE CIRCUIT COURT OF LINCOLN COUNTY, MISSOURI

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GRACE SINCLAIR  
CIRCUIT COURT CLERK  
LINCOLN COUNTY, MO

STATE OF MISSOURI ex rel. )  
Chris Koster, the Attorney )  
General of Missouri, and the )  
Missouri Department of )  
Natural Resources, )

Plaintiff, )

v. )

Case No. 12L6-CC00099

EAST MISSOURI )  
DEVELOPMENT, LLC )

Defendant. )

**Consent Judgment and Order of Permanent Injunction**

Plaintiff, State of Missouri, at the relation of Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendant East Missouri Development, LLC, by and through counsel, hereby consent to the entry of this Consent Judgment.

The Court has read Plaintiff's Petition for Injunctive Relief and Civil Penalties, in which Plaintiff alleges that Defendant violated the Missouri Clean Water Law Chapter 644 RSMo and its implementing regulations. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition and that the parties want to terminate this controversy and consent to the entry of this judgment without trial.

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WATER PROTECTION PROGRAM

This Consent Judgment is made, agreed upon and submitted to the Court for the purpose of settlement only, and upon the condition that the Court approves it in its entirety. In the event the Court does not approve of this Consent Judgment in its entirety and as agreed by the parties, it shall be null and void and have no effect in this or any other proceeding. The parties understand and agree that each and every term of this Judgment shall be enforceable by further order of this Court, and to that end, the Court retains jurisdiction of the matter in order to enforce each and every term of this Consent Judgment. The Court finds that the terms of this Consent Judgment protect the public's interest.

The parties have consented to the entry of this Consent Judgment, and before the taking of any testimony and upon the pleadings, the Court hereby **ORDERS, ADJUDGE AND DECREES** that:

**I. Objectives of the Parties**

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.
2. Defendant enters into this Consent Judgment solely as a convenience to avoid further costs and expenses in connection with this matter. No action taken by the Defendant shall be deemed or construed to be

an admission of the truth of any allegations contained in the Petition, and Defendant specifically denies the same.

## II. Definitions

3. Terms used herein shall have the same meaning as provided in the Missouri Clean Water Law, chapter 644, RSMo, and the regulations adopted thereunder. In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

b. "Best Management Practices" are techniques, measures, or structural controls that are used under a given set of conditions to manage the quantity and improve the quality of storm water runoff in the most cost-effective manner. They 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 Missouri state operating permits.

c. "Defendant" means East Missouri Development, LLC.

d. "Department" means the Missouri Department of Natural Resources.

e. "Plaintiff" or "State" means the State of Missouri on the relationship of Attorney General Chris Koster, the Department and the Missouri Clean Water Commission.

f. "Site" means Lots 56, 57, 59, 62, 63, and 64 of the property known as Cuivre Valley Subdivision ("Subdivision") located at Cuivre River Dr. in Lincoln County, Missouri.

g. "Water Protection Program" or "WPP" means the Water Protection Program of the Missouri Department of Natural Resources.

### **III. Jurisdiction**

4. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to § 644.075.1 RSMo.

### **IV. Parties Bound**

5. The provisions of this Consent Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors, and assigns. Defendant shall provide a copy of this order to all persons or entities retained to perform work required by this order.

## V. Satisfaction and Reservation of Rights

6. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendant is relieved of liability for the violations alleged in the petition.

7. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Law or regulations or under federal laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the

Missouri Clean Water Law or regulations promulgated under its authority.

d. The State further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's ~~facility~~<sup>CMR</sup>, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

#### VI. Injunctive Relief

8. Defendant agrees and is ordered to comply with all state of Missouri environmental statutes and all implementing regulations for any and all future activities in the state of Missouri.

9. Within 90 days of Defendant signing this Consent Judgment, Defendant shall implement, and thereafter maintain, all necessary best management practices to stabilize any disturbed land at the Site to prevent sediment from eroding off site or into waters of the state.

10. Within 15 days of Defendant signing this Consent Judgment, Defendant shall complete and submit to the Department for review and approval an application for a Missouri State Operating Permit for Land Disturbance as required by § 644.051.2 RSMo and 10 CSR 20-6.200(1)(A), which requires any person who disturbs land greater than one acre to obtain an operating permit from the Missouri Clean Water Commission.

11. Within 15 days receipt of Department comments on the application for a Missouri State Operating Permit, the Defendant shall respond to and address to the Department's satisfaction, all of the Department's comments on the Application. Within 90 days, the Defendant shall also stabilize any disturbed and/or bare lots at the Site using all necessary best management practices in order to prevent sediment from leaving the site. Stabilization shall be with perennial vegetation and shall cover at least seventy (70) percent of fully established plant density over one hundred (100) percent of the disturbed area.

12. Within 180 days of Defendant ceasing all land disturbance activity, the Defendant shall complete and submit to the Department for review and approval an application to terminate the Missouri State Operating Permit for land disturbance.

13. Within 15 days receipt of Department comments on the application to Terminate, the Defendant shall respond to and address, to the Department's satisfaction, all of the Department's comments on the Application.

14. Defendant may request an extension from Department from the requirement to comply with any deadline set forth herein upon a showing of good cause. Defendant must give the Department a reasonable amount of

time to consider any extension, and the request shall be approved at the sole discretion of the Department.

## VII. Civil Penalty

15. Civil Penalty. Defendant consents to the entry of judgment in favor of the State for a civil penalty of Eight Thousand Six Hundred and Sixty-six Dollars (\$8,666.00). Defendant hereby authorizes entry of this judgment against them and in favor of the State for this sum.

16. Suspended Penalty. The parties agree to suspend collection of Three Thousand Six Hundred and Sixty-six Dollars (\$3,666.00) of the total civil penalty so long as Defendant maintains compliance with the Missouri Clean Water Law for a period of two-years following entry of this Consent Judgment in circuit court. If Defendant violates the Missouri Clean Water Law during this two-year period, then Defendant shall pay the suspended penalty in accord with paragraph 16 within 15 days demand by the Attorney General.

17. Payment. Defendant agrees to pay the Five Thousand Dollar (\$5,000.00) up-front civil penalty by check made payable to the "*State of Missouri (Lincoln County)*." Within thirty (30) days of entry of this Consent Judgment in circuit court, Defendant will mail the check and a copy of the

Consent Judgment to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. The Attorney General's office may hold or deposit the check consistent with its internal policies until such time as the consent judgment is entered by the Court. After entry by the Court, the Attorney General's Office will assure that the payment is credited to the proper account.

#### **VIII. Subordination & Release**

18. This Consent Judgment shall be subordinate to, and second to, any future Deed of Trust and/or lien given by Defendant to any lender for purchase money, refinance, or improvements to Lots 56, 57, 59, 62, 63, and 64 of Cuivre Valley Subdivision in Lincoln County, Missouri.

19. So long as Defendant has complied with the terms of this Consent Judgment, including the payment of the \$5,000 up-front civil penalty, the State shall release each Lot from the terms of this Consent Judgment at the time it is transferred to a third party, or two years following entry of this Consent Judgment in circuit court, whichever is sooner.

#### **IX. Stipulated Penalties**

20. In the event that Defendant fails to comply with the requirements set forth in this Consent Judgment, Defendant shall be liable for stipulated penalties in accordance with the following schedule:

A. \$250.00 per day for each day of each violation up to thirty days.

B. \$500.00 per day for each day of each violation, from thirty-one days to sixty days.

C. \$1,000.00 per day for each day of each violation, beyond sixty days.

21. Stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Defendant shall pay stipulated penalties by check made payable to the "*State of Missouri (Lincoln County)*" and mailed, along with a copy of the State's stipulated penalty demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check will be deposited and processed in accordance with the consent judgment and Missouri law.

22. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

#### **X. Modification**

23. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among the parties, their successors and assigns and with the approval of the Court. All

modifications shall be in writing and filed with the Court.

#### XI. Costs

24. Defendant shall pay all court costs in this action, except that the parties will pay their own attorney's fees and costs.

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The parties hereby consent to this Consent Judgment through their  
duly authorized representatives as indicated below.

EAST MISSOURI DEVELOPMENT, LLC

By: Robert I. Ingram  
Robert I. Ingram

Title: PRESIDENT

Date: July 10, 2013

CHRIS KOSTER, ATTORNEY GENERAL

By: Jessica L. Blome  
Jessica L. Blome  
Assistant Attorney General

Date: 7/15/13

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Leanne Tippet Mosby  
Leanne Tippet Mosby, Director  
Division of Environmental Quality

Date: 7/16/13

SO ORDERED.

J. B. B.  
Circuit Judge  
Date: 7-22-13