

IN THE CIRCUIT COURT OF BENTON COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
Attorney General Chris Koster and)
Missouri Department of)
Natural Resources,)
)
Plaintiff,)
)
v.)
)
JOSEPHINE BAKER and)
LAKE HILLS MOTEL, INC.,)
)
Defendant.)

FILED
MAR 06 2013
Clerk of the Circuit Court
Benton County

Case No. 12BE-CC00042

Default Judgment and Assessment of Civil Penalties

This Court, upon review and after the hearing on Plaintiffs' Motion for Default Judgment against Defendant, finds that:

1. The State's Petition in the above-styled action was filed with this Court on July 17, 2012.
2. Defendants were subsequently served with a summons and copy of the Petition on August 2, 2012.
3. Defendants failed to file a timely Answer to any of the allegations pled in the Petition.
4. Supreme Court Rule 55.25(a) governs the timing of pleadings and provides in relevant part that:

A defendant shall file an answer within thirty days after the service of the summons and petition, except where

service by mail is had, in which event a defendant shall file an answer within thirty days after the acknowledgment of receipt of summons and petition or return registered or certified mail receipt is filed in the case or within forty-five days after the first publication of notice if neither personal service nor service by mail is had.

5. Supreme Court Rule 55.09 explains the effect of the party's failure to file an answer:

Specific averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleadings. Specific averments in a pleading to which no responsive pleading is required shall be taken as denied.

6. In light of Defendants' failure to file a timely Answer with this Court, Defendants are subject to the entry of an Order of Default Judgment pursuant to Supreme Court Rule 74.05. Supreme Court Rule 74.05 provides in pertinent part:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, upon proof of damages or entitlement to other relief, a judgment may be entered against the defaulting party. The entry of an interlocutory order of default is not a condition precedent to the entry of a default judgment.

7. By virtue of Defendants' failure to file a timely Answer or responsive pleading within thirty (30) days after service of the summons, Defendants are deemed in default, and the facts alleged in the Petition are deemed admitted.

8. This Court has authority to issue an injunction and assess civil penalties against Defendants, pursuant to Supreme Court Rule 74.05(c), which states: “[a] default judgment may include an award of damages, other relief, or both.”

9. Section 319.127 RSMo¹ authorizes this court to assess civil penalties of up to Ten Thousand Dollars (\$10,000.00) per day for each day of each violation of the Missouri Clean Water Law and implementing regulations.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

10. The Court finds that the terms of this Default Judgment protect the public’s interest.

11. For purposes of this decree, this Court has jurisdiction over the subject matter of this action and over the parties hereto. This Default Judgment covers matters alleged in the State of Missouri’s Petition.

¹ All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

12. The provisions of this Default Judgment shall be binding upon the parties to this Judgment as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or will be acting in concert or privity with, on behalf of the parties to this judgment or their agents, servants, employees, heirs, successors, and assigns.

13. Defendants are permanently ordered and enjoined to obey, abide by and comply with this Order, and the Missouri Clean Water Law, Chapter 319.100 *et seq.*, RSMo, and the rules and regulations promulgated thereunder, including but not limited to maintaining evidence of financial responsibility, as described in the *Petition for Injunctive Relief and Civil Penalties*.

14. Defendants are further enjoined to bring the wastewater treatment lagoon that formerly served the Lake Hills Motel, located at 38535 Highway 93, Warsaw, Benton County, Missouri, (the Facility) into compliance with the Missouri Clean Water Law by implementing the following schedule of injunctive relief:

- a. Within thirty (30) days of the effective date of this Default Judgment, Defendants are ordered to submit a closure plan for the Facility to the Missouri Department of Natural Resources for

review and approval. The closure plan shall comply with Standard Conditions for National Pollutant Discharge Elimination System Permits, Part III, Section I, Closure Requirements, and shall be submitted to the Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, Missouri 65102-0176. If the Department comments and/or requests modification of the closure plan, Defendants shall make the modifications as directed by the Department and/or address the Department's comments and resubmit the document within fifteen (15) days receipt of the Department's comment(s) or modification request.

- b. Within one hundred twenty days (120) days of Department approval of the closure plan, Defendants are ordered to complete closure of the Facility in accordance with the Department-approved plan. Defendants are further ordered to submit written documentation that the lagoon has been closed in accordance with the Department-approved closure plan and a completed Form J, Request for Termination of a State Operating Permit to Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, Missouri 65102-0176.

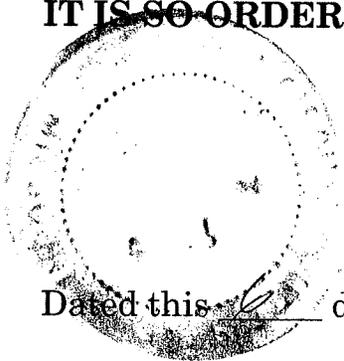
15. Defendants are hereby ordered to immediately forward civil penalties in the amount of \$10,000.00 in the form of a certified check, made payable to the "State of Missouri (Benton County)," to Collections Specialist, P.O. Box 899, Jefferson City, MO 65102-0899. Execution for said sum to issue immediately.

16. This Default Judgment does not discharge any other potentially responsible parties.

17. All costs associated with this action shall be paid by Defendants.

18. Defendants shall pay the State of Missouri its costs expended herein.

IT IS SO ORDERED.





Circuit Judge

Dated this 12 day of March February, 2013.

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Missouri Department of Natural)
Resources, and Missouri Clean Water)
Commission,)

Plaintiff,)

v.)

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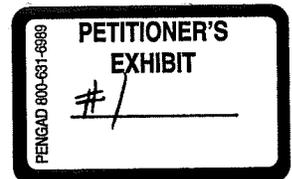
Affidavit of Corinne Rosania

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Before me, the undersigned authority, personally appeared Corinne Rosania, who, being by me duly sworn, deposed as follows:

1. My name is Corinne Rosania. I am of sound mind and capable of making this affidavit.

2. I am an employee of the Missouri Department of Natural Resources, which is an agency of the state of Missouri, as an Environmental Specialist in the Water Protection Program. The facts stated in this affidavit are based upon my personal knowledge as well as historical knowledge



acquired during investigation of this matter by the Missouri Department of Natural Resources.

3. Josephine Baker is a resident of Missouri who lives in Springfield, Greene County, Missouri.

4. Lake Hills Motel, Inc. is a Missouri corporation in good standing, with its principal place of business located at 1231 E. Walnut St., Springfield, Greene County, Missouri.

5. At all times relevant to this petition, Ms. Baker and Lake Hills Motel, Inc. owned and operated the Lake Hills Motel, located at 31535 Highway 83, Warsaw, Benton County, Missouri, and the wastewater treatment lagoon that formerly served the Motel. Ms. Baker, either alone or in conjunction with others, exercised control over the operations of Lake Hills Motel, Inc. and the particular activities that constitute a violation of the Missouri environmental laws and regulations described below.

6. Since 2000, Ms. Baker and Lake Hills Motel, Inc. have owned the Lake Hills Motel and the single-cell wastewater stabilization lagoon (lagoon) that formerly served it under the terms of Missouri State Operating Permit No. MO-0108138 (Permit).

7. The Permit authorized the discharge of treated wastewater from the former lagoon to a tributary to the Lake of the Ozarks, approximately 1.3

miles downstream of Truman Dam, with certain effluent limitations and monitoring requirements.

8. On an unknown date in 2000, the wastewater generated by the 22 units and restaurant in the Motel was diverted to a permitted wastewater treatment facility owned and operated by Benton County Sewer District No. 1.

9. To date, Ms. Baker and Lake Hills Motel, Inc. have failed to close the lagoon, which has the potential to release sludge and other wastewater contaminants from its outfall to a tributary to the Lake of the Ozarks.

10. Sludge and wastewater discharges from the lagoon are “water contaminants,” as that term is defined in § 644.016(23).

11. The tributary to the Lake of the Ozarks and the Lake of the Ozarks are “waters of the state” as that term is defined in § 644.016(26), RSMo.

12. The lagoon is a “water contaminant source” as that term is defined by § 644.016(24), RSMo.

13. Section 644.051.1(1) RSMo prohibits 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.

14. Since 2000, Ms. Baker and Lake Hills Motel, Inc. violated § 644.051.1(1) RSMo by causing pollution of waters of the state or by placing or causing or permitting to be placed water contamination in a location where it was reasonably certain to cause pollution of waters of the state, in violation of § 644.051.1(1) RSMo.

15. Missouri Clean Water Regulation 10 CSR 20-6.010(12)(A) requires persons who cease operation of waste, wastewater, and sludge handling and treatment facilities to close the facilities in accordance with a closure plan approved by the Department.

16. Since 2000 when the Motel wastewater was diverted to the Benton County Sewer District's wastewater treatment facility, Ms. Baker and Lake Hills Motel, Inc. have failed to submit an approvable closure plan to the Department and failed to close the lagoon.

17. Ms. Baker and Lake Hills Motel, Inc. violated 10 CSR 20-6.010(12)(A) by failing to submit an approvable closure plan for the lagoon to the Department.

18. Ms. Baker and Lake Hills Motel, Inc. violated 10 CSR 20-6.010(12)(A) by failing to properly close the lagoon in accordance with an approvable closure plan.

19. Under § 644.076.1, RSMo, Ms. Baker is 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.

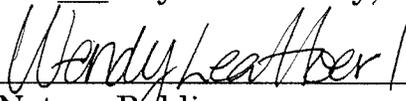
20. Due to the nature of the violations set forth herein, the Department believes that a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) is appropriate.

Further Affiant sayeth not.



Corinne Rosania
Missouri Department of Natural Resources

Subscribed and sworn to before me this 25 day of February, 2013.



Notary Public

My Commission expires

