

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

RECEIVED

SEP 9 2014

**IN THE MATTER OF:**

Holman Apartments Subdivision

**SERVE:**

Holman Holdings, LLC

No. 2014-WPCB-1292

**ABATEMENT ORDER ON CONSENT**

**I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuing of this Abatement Order on Consent (AOC) No. 2014-WPCB-1292, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Holman Holdings, LLC is in violation of the Missouri Clean Water Law (MCWL). 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 MCWL Section 644.076.1, RSMo. Litigation may occur without further administrative 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 for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve Holman Holdings, LLC of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

**II. FINDINGS OF FACT**

A. Holman Holdings, LLC (company) owns and is disturbing a subdivision site, known as the Holman Apartments Subdivision. Mr. James Talt Holman is the registered agent for the company. The subdivision is 5.57 acres in size (approx. 5 acres disturbed), located at Section 15, Township 57 North, Range 14 West in Macon, Missouri 63552. The site consists of five lots that have not been sold or built on as of September 19, 2013. The site operates pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) No. MO-RA02138. The receiving stream for stormwater runoff from the site is a tributary to Sewer Creek, and the first classified stream is Middle Fork Salt River.

- B. Requirements of an MSOP for land disturbance include, but not limited to, the development of a Stormwater Pollution Prevention Plan (SWPPP) and the implementation of appropriate Best Management Practices (BMPs) throughout the site.
- C. Middle Fork Salt River and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- D. Sediment is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- E. On April 16, 2013, Department staff conducted an investigation of the site after receiving an environmental concern of muddy water running off the construction site. During the investigation, staff discovered that there were no BMPs present and documented a significant amount of soil erosion had taken place. Staff further observed sediment accumulation in the tributary to Sewer Creek. Department staff asked Mr. Holman if there was a SWPPP; BMPs in place; or if he maintained weekly site inspection records. Mr. Holman stated there was no SWPPP; some BMPs were removed prior to recent sewer line construction; and that weekly inspection records were located off-site. Department staff asked Mr. Holman if a public notification sign was posted anywhere on the property, and he stated that the sign was posted until the tree that the sign was posted to was pushed down during the construction process.
- F. On the afternoon of April 16, 2013, Mr. Holman arrived at the Northeast Regional Office (NERO), met with Department staff, and provided staff a site map of the development and copies of the weekly site inspection records. After reviewing the records, Department staff concluded they were incomplete, as the records did not include descriptions of structural and maintenance problems of the BMPs.
- G. On April 24, 2013, Mr. Holman brought a SWPPP and updated site map with BMP information to the NERO. Staff reviewed the site map and SWPPP and concluded that not all of the BMPs in the SWPPP had been implemented.
- H. Based upon violations of the MCWL observed during the April 16, 2013, inspection, the Department sent the inspection report and issued the company Notice of Violation (NOV) No. NER2013041816045784 on May 15, 2013. The NOV required the company to: 1) submit a written statement to the Department explaining what actions have been taken to correct the unsatisfactory conditions of water contaminants entering waters of the state and the actions taken to correct the problem of the public notification sign not being posted; 2) ensure that adequate BMPs are implemented and to ensure that sediment does not leave the site or enter waters of the state; and 3) complete inspection reports in accordance with MSOP No. MO-RA02138, including reporting evidence of erosion or sediment deposition, and inspection of BMPs after rainfall events.
- I. On September 19, 2013, Department staff conducted an inspection of the site and observed an area of redirected stream flow and that drainage flowed into an

unnamed tributary to Sewer Creek. Department staff further observed rock along the slope of the land disturbance area along the stream where the basin did not extend, however, the rocks had been largely covered by sediment. Department staff noted that the southernmost side of the site, including the southern slope of the stormwater ditch, was not established with vegetation.

- J. On October 8, 2013, staff conducted a follow-up inspection and observed an accumulation of sediment offsite in the stream. A straw bale and sediment fence was observed to have been installed before the outfall for the site, but was partially covered by sediment. Department staff observed partial erosion on the sides of the drainage ditch. Staff also observed a sediment fence on the northern side of the site had been topped and mostly filled by sediment in two separate places.
- K. Based upon the violations documented by Department staff during the October 8, 2013, inspection, the Department sent the company the inspection report and issued the company NOV No. NER2013101610173702 on October 25, 2013, for: causing pollution to waters of the state, and failure to install and maintain BMPs. The inspection report associated with the NOV required the company to submit a written statement to the NERO by November 15, 2013 explaining what actions have been taken to correct the unsatisfactory features and prevent a reoccurrence in the future.
- L. On November 13, 2013, Mr. Holman submitted written correspondence to the Department addressing the issues of the October 25, 2013 NOV. The correspondence outlined repairs made to the BMPs throughout the site.
- M. MCWL and Section 644.096, RSMo, authorize the state, or any political subdivision or agency to recover actual damages, including costs and expenses necessary to establish or collect any sums under Sections 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the state to their condition as they existed before violation, sustained by it because of any violation.
- N. The Department dispatched employees to investigate an environmental concern on April 16, 2013, and also conducted inspections on September 19, 2013, and October 8, 2013. In doing so, the Department incurred costs and expenses, including but not limited to travel expenses. These costs incurred by the Department total \$394.96.
- O. On August 25, 2014, the Department received a check, made payable to "Macon County Treasurer, as Custodian of the Macon County School Fund", in the amount of \$4,000.00 for payment of a civil penalty to resolve the past violations of the MCWL and its implementing regulations. The Department also received a second check, made payable to the "State of Missouri", in the amount \$394.96 for the state's cost recovery.

- P. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to \$10,000.00 per day per violation.

### III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed at the Subdivision are as follows:

1. Discharged water contaminants into waters of the state, which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031, or applicable subsection of 10 CSR 20-7.031.
2. Caused pollution of waters of the state, or placed or caused or permitted to be placed a water contaminant in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.
3. Failed to implement and maintain BMPs as required by Requirements No. 2 of MSOP No. MO-RA02138, in violation of Section 644.076.1, RSMo and 10 CSR 20-6.200.
4. Failed to record accurate and complete site inspections as required by Requirements No. 10 of MSOP No. MO-RA02138, in violation of 644.076.1, RSMo.

### IV. AGREEMENT

- A. The Department and the company desire to amicably resolve all claims that may be brought against the company for violations alleged above in Section III, Citations and Conclusions of Law, without the company admitting to 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 company under this AOC.
- C. The company, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of \$10,000.00 and has submitted an up-front payment in the amount of \$4,000.00 to the Department. The Department and the Company further agree that \$6,000.00 shall be suspended as described in Paragraph D below.

- D. The suspended penalty described in Paragraph C of \$6,000.00 shall be suspended for a period of two years from the execution of this AOC upon the condition that the company does not violate the terms of the AOC, the MCWL, or the requirements of MSOP No. Mo-RA02138. Upon determination that the company has failed to meet the terms of this AOC, including the requirements of Paragraphs F through J, the Department shall send a written demand for the suspended penalty to the company. The company shall have 15 days from receipt of written demand to submit the suspended penalty to the address listed below:

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

- E. The company agrees to pay the state's investigative costs in the amount of \$394.96 in the form of a certified check or cashier's check made payable to the "State of Missouri." On August 25, 2014, the Department received a check, made payable to the "State of Missouri", in the amount of \$394.96 for the state's cost recovery.
- F. The company agrees to immediately complete the following: i) implement and maintain BMPs throughout the site; ii) implement the SWPPP for the Holman Apartments development; and iii) maintain the site within the requirements and conditions of MSOP No. MO-RA02138 until the MSOP is terminated to prevent sediment from discharging off-site or into waters of the state.
- G. The company agrees to conduct regularly scheduled inspections of all the erosion and sediment control structures at least once per seven days, or within 48 hours after a rain event has ceased, or within 72 hours if the rain event ceases during a non-work day such as a weekend or holiday, as stated by Requirement Number 10 in the MSOP, until MSOP No. MO-RA02138 is terminated.
- H. Within 90 days of the effective date of this AOC, and every 30 days thereafter, the company agrees to submit to the Department, inspection reports outlined in Paragraph G from above.
- I. The company agrees to maintain inspection reports and a current copy of the SWPPP at the site during normal working hours and to comply with all conditions and requirements, including but not limited to maintenance and monitoring requirements contained in MSOP No. MO-RA02138 until MSOP No. MO-RA02138 is terminated.
- J. Within 60 days of the effective date of this AOC, the company agrees to submit to the Department, for review and approval, a complete report, with color photographs, detailing improvements made to the Holman Apartments development site and evidence of proper BMP installation and maintenance. This report shall also include inspections conducted by the company, as referenced in Paragraph G from above.

- K. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the company shall notify the Department by telephone or electronic mail i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the Department, the Company shall submit to the Department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the company's right to request an extension and may be grounds for the Department to deny the company an extension.
- L. Should the company fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs F through J, the company shall be subject to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

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

Missouri Department of Natural Resources  
 Accounting Program  
 P.O. Box 477  
 Jefferson City, MO 65102-0477

- M. Nothing in this AOC forgives the company 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 for any non-compliance 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 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.
- N. 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.
- O. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the company for its records.

P. The company shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

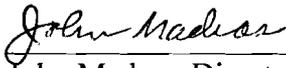
By signing this AOC, the company consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

VI. CORRESPONDENCE AND DOCUMENTATION

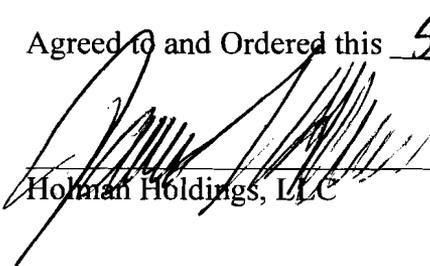
Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

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

Agreed to and Ordered this 12<sup>th</sup> day of September, 2014

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

Agreed to and Ordered this 5 day of Sept., 2014

  
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Holman Holdings, LLC

Copies of the foregoing served by certified mail to:

Mr. James Talt Holman  
c/o Holman Holdings, LLC  
805 Holman Lane  
Macon, MO 63552

CERTIFIED MAIL #

Mr. James Talt Holman  
c/o Holman Holdings, LLC  
P.O. Box 591  
Macon, MO 63552

CERTIFIED MAIL #

c: Ms. Irene Crawford, Director, Northeast Regional Office