

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Kenneth and Deborah Bell)
 Land Disturbance Site)
 17816 State Highway 25) **Order No. 2014-WPCB-1315**
 Bloomfield, MO 63825)
)
 Proceeding under the)
 Missouri Clean Water Law)

**NOTICE AND ORDER TO ABATE VIOLATIONS
AND PAY ADMINISTRATIVE PENALTIES**

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RETURN RECEIPT REQUESTED

TO: Mr. Kenneth and Ms. Deborah Bell
23476 State Highway P
Bell City, MO 63735

You are hereby notified that on this date the Department of Natural Resources has issued this Notice and Order to Abate Violations and Pay Administrative Penalties to Mr. Kenneth and Mrs. Deborah Bell (respondents) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically sections 644.056 and 644.079 RSMo.

Failure to comply with this order is, by itself, a violation of the MCWL under section 644.076 RSMo. Continued non-compliance may result in the Department pursuing legal action for injunctive relief, additional penalties of up to \$10,000.00 per day for each day or part thereof of non-compliance, a surcharge of 15% of the penalty described herein, 10% interest on any amounts owed, attorney fees and costs, and/or any other remedy authorized by law, including but not limited to sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

FINDINGS OF FACT

1. Respondents own a tract of land located in part of the NE ¼ of the NE of Section 25, Township 26 North, Range 10 East, being situate east of the east right-of-way line of Missouri State Highway 25 in Stoddard County, Missouri. Mr. and Mrs. Bell have disturbed a portion of this tract of land, and currently operate the land disturbance site pursuant to the terms and conditions of Missouri State Operating Permit (MSOP) No. MO-RA04124. The permitted site includes 26 acres and is located at 17816 State Highway 25, Bloomfield, Missouri.

2. MSOP No. MO-RA04124 was issued December 2, 2013, and expires February 7, 2017. The MSOP authorizes the discharge of stormwater from construction or land disturbance activity at the site in accordance with the effluent limitations and monitoring requirements set forth in the MSOP. The site is located in the watershed of Lick Creek Ditch.

3. Lick Creek Ditch and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.

4. Sediment is a water contaminant as the term is defined in Section 644.016(24), RSMo.

5. Section 644.051.1(1) makes it 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.

6. Section 644.051.1(2) makes it unlawful for any person to discharge water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established by the commission.

7. Section 644.076.1, RSMo makes it unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant or point source in violation of the MCWL, any standard, rule or regulation promulgated thereunder, or any MSOP issued by the Missouri Clean Water Commission.

8. On August 6 and October 7, 2013, Department staff conducted complaint investigations at the site, and observed rill and gully erosion on the disturbed areas and large amounts of sediment deposition in the receiving tributary. Staff did not observe any Best Management Practices (BMPs) to prevent erosion and sediment loss from the site.

9. On October 24, 2013, the Department issued the respondents Notice of Violation (NOV) No. 19331SE for violations observed during the October 7, 2013, site investigation. The transmittal letter required the respondents to obtain a land disturbance permit and install adequate BMPs according to a Storm Water Pollution Prevention Plan (SWPPP) to address stormwater discharges from the site. On December 2, 2013, the respondents applied for and were issued a land disturbance permit (i.e., MSOP No. MO-RA04124) for the site from the Department.

10. On May 14, 2014, following a rain event in Bloomfield, Missouri, Department staff conducted a sampling trip at the site. Staff observed the receiving tributary approximately 700 feet downstream from the disturbed area and documented that the water was murky and laden with sediment from the site. Water analyses of a sample from this location documented a Settleable Solid (SS) concentration of 20.0 ml/L/hr, which is a significant exceedance of the permitted limitation of 2.5 ml/L/hr.

11. On May 29, 2014, Department staff conducted a compliance inspection at the site, and documented that approximately six acres of the permitted site was disturbed, and there were no BMPs for stormwater and sediment control. Staff observed rills and gullies on a majority of the slopes due to erosion. Approximately 300 feet downstream from the disturbed area, staff observed a significant amount of sediment from the site covering a low water crossing.

12. On June 16, 2014, the Department issued NOV No. 19401SE to the respondents for violations documented during the May 14 and 29, 2014, site visits. The transmittal letter required the respondents to install BMPs sufficient to reduce sediment loss from the site and enable stormwater discharges to comply with the permitted SS limitations, and submit to the Department a copy of the site's SWPPP. The letter required a response within seven days of receipt, and offered the respondents an opportunity to meet to discuss corrective actions required to achieve compliance at the site. To date, the Department has not received a response.

13. As of the date of this order, the site has not been stabilized, nor have BMPs been implemented for stormwater and sediment control. The disturbed area is still devoid of vegetation and the Department has not received a copy of a SWPPP for the site from the respondents.

14. As described above, Department staff has observed on four separate occasions that the respondents failed to implement BMPs onsite to manage stormwater and prevent sediment loss from the disturbed area. As a result, large quantities of sediment discharged from the site and entered waters of the state. The sediment caused a violation of Missouri's Water Quality Standards (10 CSR 20-7.031) and poses a nuisance to downstream land owners who called on multiple occasions to report environmental concerns with the respondents' land

disturbance activities. Sedimentation in the stream caused unsightly or harmful bottom deposits, turbidity and physical changes that would impair the natural biological community.

15. The amount of the administrative penalty included herein was assessed according to the criteria of 10 CSR 20-3.010. From a gravity-based analysis, the violations posed at least a moderate potential for harm based on the potential risk to human health, safety and the environment. The violations were also at least a moderate deviation from the standard required by the MCWL and its implementing regulations. Using the gravity-based matrix, and finding both the deviation from the standard and the potential for harm the base penalty falls within a range of \$4,501 to \$5,500. Additionally, the Department approximates that the respondents received an economic benefit of at least \$12,743 by their failure to implement and maintain adequate BMPs at the site over the past 13 months. Since the Department documented four violations of the MCWL, and the respondents failed to correct the non-compliance after being informed of the requirements by the Department on at least three separate occasions and received a significant economic benefit by not complying with the MCWL, an administrative penalty in the amount of \$32,743 is justified.

16. This order is necessary to compel compliance and/or to prevent or eliminate threats to human health and the environment.

STATEMENT OF VIOLATIONS

The respondents have violated the MCWL and its implementing regulations as follows:

17. On August 6 and October 7, 2013, and May 14 and 29, 2014, caused pollution of a tributary to Lick Creek Ditch, 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.

18. On August 6 and October 7, 2013, and May 14 and 29, 2014, 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.

19. Since May 14, 2014, failed to develop and maintain a SWPPP as required by MSOP No. MO-RA04124 in violation of Section 644.076.1, RSMo.

20. Since May 14, 2014, failed to implement and maintain BMPs for erosion and sediment control as required by MSOP No. MO-RA04124 in violation of Section 644.076.1, RSMo and 10 CSR 20-6.200.

CORRECTIVE ACTIONS

Pursuant to section 644.056 RSMo, the Department hereby orders the respondents to complete each of the following corrective actions:

21. Immediately upon receipt of this order, implement BMPs onsite to manage stormwater and prevent sediment loss from the disturbed areas to prevent violations of MSOP No. MO-RA04124 and Water Quality Standards established in 10 CSR 20-7.031.

22. Within 30 days of receipt of this order, submit to the Department for review and comment a SWPPP for the site which incorporates site specific practices to best minimize soil exposure, soil erosion and the discharge of pollutants, as required by MSOP No. MO-RA04124. The respondents shall select, install, use, operate and maintain appropriate BMPs for the site; all BMPs must be described and justified in the SWPPP.

23. Within 15 days of receipt of Department comments on the SWPPP, respondents shall respond in writing to the Department, addressing all Department comments on the SWPPP to the satisfaction of the Department.

24. If, after two comment letters, respondents fail to address all the Department's comments to the satisfaction of the Department, respondents shall hire a Certified Professional in Erosion and Sediment Control (CPESC), or equivalent professional, to develop a SWPPP for the site in accordance with MSOP No. MO-RA04124. Respondents shall submit the SWPPP prepared by a CPESC within 30 days of receipt of the Department's third comment letter. If the Department comments on the revised SWPPP, within 15 days of receipt of Department comments, respondents shall respond in writing to the Department, addressing all Department comments on the SWPPP to the satisfaction of the Department.

25. Within 30 days of receipt of this order, respondents shall implement the SWPPP. Continuing throughout the life of the land disturbance project and until such time that the site has been stabilized and the Department terminates MSOP No. MO-RA04124, respondents shall update the SWPPP as site conditions change and maintain BMPs on the site in accordance with the SWPPP so as to prevent sediment loss from the site leading to violations of MSOP No. MO-RA04124 and Water Quality Standards established in 10 CSR 20-7.031.

26. Respondents shall conduct regularly scheduled inspections at least once per seven calendar days of all the erosion and sediment control structures onsite, and update the SWPPP as site conditions change. If rainfall causes stormwater runoff to occur, the BMPs must be inspected within 48 hours after the rain event has ceased during a normal work day and within 72 hours if the rain event ceases during a non-work day, such as a weekend or holiday. If BMPs

have been damaged or made ineffective, respondents shall correct the problem within 7 calendar days.

27. Respondents shall maintain site inspection reports and a current copy of the site's SWPPP at the site during normal working hours and comply with all conditions and requirements, including but not limited to maintenance and monitoring requirements, contained in MSOP No. MO-RA04124.

PENALTY

Pursuant to section 644.079 RSMo and 10 CSR 20-3.010, the Department hereby orders the respondents to pay administrative penalties for the above-referenced violations as follows:

28. Within 30 days from the date of issuance of this order, the respondents shall pay to the Department an administrative penalty in the amount of \$32,743.

29. Such payment shall be made by check made payable to: *Stoddard County Collector as Custodian of the Stoddard County School Fund*.

30. Such payment must be delivered to the Department of Natural Resources, c/o Accounting Program, P.O. Box 176, Jefferson City, MO 65102, for forwarding to the Stoddard County Collector.

SUBMISSIONS

31. All other documentation submitted to the Department for compliance with this Order shall be submitted within the timeframes specified to:

Ms. Corinne Rosania Brown
Missouri Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

32. Any request for an extension of time or to otherwise modify this order may be considered on a case-by-case basis, if the respondents make a written request to the Department within 10 business days of this order, and otherwise provides appropriate justification and/or documentation to the Department in a timely manner. Any modification of this order shall be in writing.

33. Compliance with this order resolves only the specific violations described herein, and this order shall not be construed as a waiver or modification or any other requirements of the Missouri Clean Water Law and regulations, or any other source of law. Nor does this order resolve any future violations of this order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

34. This order shall apply to and be binding upon the respondents and any of its agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the respondents. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not relieve the respondents of its obligation to comply with this order.

35. For any plan or submittal from the respondents that is required by this order and subject to Department approval under this order, the Department may approve, disapprove, require revisions, or otherwise modify any such plan or submittal. Any such Department decision shall be conveyed in writing to the respondents. Disapproval may result in further orders or pursuit of other forms of relief by the Department. If the Department requires revisions, the Respondents shall submit a revised version of the plan or submittal within 10 business days after receiving notice of the Department's required revisions, or within such other timeframe as the Department may specify. If the Department approves or modifies in writing such plan or submittal, it shall become enforceable under this order, and the respondents shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

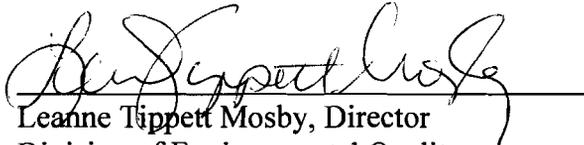
36. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
Truman State Office Building, Room 640
301 W. High Street
P.O. Box 1557
Jefferson City, Missouri 65102
phone: 573-751-2422
fax: 573-751-5018
website: www.ao.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 8th day of December 2014 by:

DEPARTMENT OF NATURAL RESOURCES



Leanne Tippett Mosby, Director
Division of Environmental Quality

c: Mr. Jackson Bostic, Director, Southeast Regional Office
Mr. Jack McManus, Missouri Attorney General's Office
Missouri Clean Water Commission