

IN THE CIRCUIT COURT OF HOWELL COUNTY, MISSOURI

FILED

FEB 20 2015 *sad*

CINDY WEEKS  
Circuit Clerk, Howell County MO

STATE OF MISSOURI ex rel. )  
 Attorney General Chris Koster and )  
 Missouri Department of )  
 Natural Resources, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DEXTER FROST, )  
 )  
 Defendant. )

Case No. 144L-CC00143

CONSENT JUDGMENT

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendant Dexter Frost, by and through counsel, 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. The Court is advised that the parties have consented to the terms in this Consent Judgment for settlement purposes only, and that their consent is conditioned upon the Court approving the Consent Judgment in its entirety. 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. The Court retains jurisdiction over the matter in order to enforce each and every term of this Consent Judgment.

The parties hereto, having consented to the entry of this Consent Judgment, now therefore, before the taking of any testimony and upon the pleadings, it is hereby ORDERED, ADJUDGED, AND DECREED 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.

### **II. Definitions**

2. Terms used herein shall have the same meaning as provided in 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. "Defendant" means Dexter Frost.

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

D. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.

### **III. Jurisdiction and Venue**

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to § 644.076.1, RSMo.<sup>1</sup> Venue is proper in this court pursuant to § 644.076.1, RSMo, because the Defendant's conduct giving rise to this action took place in Howell County.

#### **IV. Parties Bound**

4. The provisions of this 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**

5. 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.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations, or under other federal or state laws, or regulations, except as

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<sup>1</sup> All statutory references shall be to the 2000 Missouri Revised Statutes, unless specifically stated otherwise.

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 of Missouri 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, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

## **VI. Injunctive Relief**

7. Defendant 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.

8. Defendant shall make reasonable and diligent efforts, at least until December 31, 2014, to obtain funding for the construction of a centralized wastewater

treatment facility for the Eagles Landing Subdivision, and provide proof to the Department of all such efforts.

9. Defendant is enjoined from developing or selling lots within the Eagles Landing Subdivision unless the Department has first approved a method of wastewater treatment for such lots. Defendant shall place a deed restriction on remaining lots owned by Defendant barring development until Eagle's Landing Subdivision, including any lots owned by Defendant, has a centralized wastewater treatment facility.

### **VII. Information Collection and Retention**

10. The State, through its authorized representatives, shall have the right of entry into any facility covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

A. monitor the progress of activities required under this Consent Judgment;

B. verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;

C. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

D. obtain documentary evidence, including photographs and similar data;

and

E. assess Defendant's compliance with this Consent Judgment.

11. Upon request, Defendant shall provide the State, through its authorized representatives, splits of any samples taken by Defendant.

12. Until five years after the termination of this Consent Judgment, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Judgment. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the State, Defendant shall provide copies of any documents, records, or other information required to be maintained under this paragraph.

13. At the conclusion of the information-retention period provided in the preceding paragraph, Defendant shall notify the State at least ninety days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding paragraph and, upon request by the State, Defendant shall deliver any such documents, records, or other information to the State.

14. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

### **VIII. Civil Penalty**

15. Defendant consents to the entry of judgment in favor of the State of Missouri for a civil penalty of \$4,000.00. Defendant hereby authorizes entry of this judgment against it and in favor of the State of Missouri for this sum.

16. Defendant agrees to pay the \$4,000.00 up-front civil penalty by check made payable to the "*State of Missouri*" within thirty days of the entry of this Consent Judgment by mailing same to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

### **IX. Stipulated Penalties**

17. 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. \$50.00 per day for each day of each violation up to thirty days.

B. \$100.00 per day for each day of each violation, from thirty-one days to sixty days.

C. \$200.00 per day for each day of each violation, beyond sixty days.

18. 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*" 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.

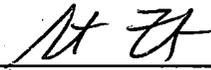
19. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties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

**X. Modification**

20. 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**

21. Defendant shall pay all court costs in this action.

By:   
Dexter Frost

Date: 9/6/14

MISSOURI ATTORNEY GENERAL'S OFFICE

By:   
Timothy A. Blackwell  
Assistant Attorney General

Date: 10/8/14

MISSOURI DEPARTMENT OF NATURAL RESOURCES

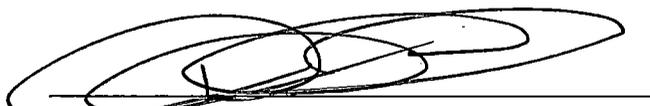
By: \_\_\_\_\_

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: John Madras  
John Madras, Director  
Water Protection Program

Date: 10/15/14

SO ORDERED.

  
\_\_\_\_\_  
Circuit Judge

Date: 2.20.15