

IN THE CIRCUIT COURT OF CRAWFORD COUNTY, MISSOURI

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

Filed
June 5, 2015
Crawford County
Circuit Court

Plaintiff,)

v.)

Case No.: 15CF-CC00018

OZARK MOUNTAIN TECHNOLOGIES,)
INC.,)

Defendant.)

CONSENT JUDGMENT

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendant Ozark Mountain Technologies, Inc., 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 agreed as follows.

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 the allegations contained in the State's Petition, as well as any allegations that could be brought based upon the contents of the Self-Disclosure Reports and any allegations that could be brought by the State based upon the facts alleged in the Federal Action.

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;
- b. "Defendant" means Ozark Mountain Technologies, Inc.;
- c. "Department" means the Missouri Department of Natural Resources;
- d. "Facility" means Defendant's site located at 106 Midland Drive in Cuba, Crawford County;

e. “Federal Action” means USA v. Ozark Mountain Technologies, Case Number 4:15-cr-00177-TCM-1 filed in the United States District Court, Eastern District of Missouri (St. Louis);

f. “Plaintiff” and “State” mean the State of Missouri;

g. “Self-Disclosure Reports” means the Defendant’s survey of the Facility for compliance with environmental permits and regulations and submitted to the Plaintiff on December 3, 2013, and updated on January 13, 2014, and March 19, 2014.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter in this case pursuant to § 644.076.1 RSMo.

4. Defendant consents to this Court’s personal jurisdiction.

5. 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 Crawford County.

IV. Parties Bound

6. The provisions of this Consent Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, and assigns. These provisions likewise bind 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 Consent Judgment to all persons or entities retained to perform work required by its terms.

V. Additional Matters Settled

7. In addition to the violations alleged in the Petition, Defendant conducted environmental audits of its facility and disclosed noncompliance with environmental permits and environmental regulations administered by the Department and provided the Self-Disclosure Reports to the State. The Self-Disclosure Reports included corrective actions taken or to be taken to resolve noncompliance.

VI. Satisfaction and Reservation of Rights

8. Upon the completion of all terms of this Consent Judgment Defendant is relieved of liability to the State for the violations alleged in the Petition, alleged by the United States in the Federal Action, and described in the Self-Disclosure Reports.

9. 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 expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that nothing in this Consent Judgment shall:

- a. Prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur;
- b. Preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition, not included in the Self-Disclosure Reports, or not alleged in the Federal Action;
- c. Preclude the State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law or regulations promulgated under its authority.

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

VII. Injunctive Relief

11. Defendant is ordered to comply with Missouri's Clean Water Law, Solid Waste Management Law, Hazardous Waste Management Law, and Air Conservation Law and all implementing regulations for any and all future activities in the State of Missouri.

12. Within 90 (ninety) days of the effective date of this Consent Judgment Defendant is ordered to provide a current self-disclosure report

demonstrating full compliance with all items listed in the Self-Disclosure Reports.

VIII. Information Collection and Retention

13. 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.

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

15. 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 non-privileged 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 non-privileged documents, records, or other information required to be maintained under this Paragraph.

16. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the State at least ninety (90) 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.

17. 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.

IX. Civil Penalty

18. The civil penalty provided herein addresses the violations alleged in the Petition and any violations that could have been brought as a result of the Self-Disclosure Reports or the facts alleged in the Federal Action. Defendant remains subject to enforcement action for any continuing noncompliance or noncompliance subsequent to entry of this Consent Judgment.

19. Defendant consents to the entry of judgment in favor of the State of Missouri for a civil penalty of \$90,000.00. Defendant hereby authorizes entry of this judgment against it and in favor of the State of Missouri for this sum. The calculated amount of the civil penalty is based upon the violations alleged in the Petition, and is not affected by the Self-Disclosure Reports.

20. Defendant agrees to pay the \$90,000.00 civil penalty by check made payable to the "*State of Missouri (Crawford County)*" within 30 (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.

X. Stipulated Penalties

21. In the event that Defendant fail 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. \$200.00 per day for each day of each violation up to thirty days;

B. \$400.00 per day for each day of each violation, from thirty-one days to sixty days;

C. \$600.00 per day for each day of each violation, beyond sixty days;

22. Stipulated penalties shall be due and payable within ten days of demand by the Attorney General's Office. Defendant shall pay stipulated penalties by check made payable to the "*State of Missouri (Crawford 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.

23. 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.

XI. Response Cost Recovery and Natural Resource Damages

24. Reimbursement of State's Costs and Expenses Incurred Through October 7, 2014. Within 30 (thirty) days of Court approval of this Consent Judgment, Defendant shall reimburse the Department for its investigative and response costs and expenses incurred as a result of the events described in the Petition, in the amount of \$2,051.13. Payment shall be made by check made payable to the "*State of Missouri*" and delivered to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

25. Natural Resource Damages. Within 30 (thirty) days of Court approval of this Consent Judgment, Defendant agrees to pay Natural Resource Damages to the State in the amount of \$82,948.87 for the damages to the surface water and other natural resources of the State resulting from the events described in the Petition. The payment shall be made by check made payable to the "*State of Missouri (Natural Resource Damages Subaccount No. 0555)*" and delivered to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. No Natural Resource Damages are assessed for the matters in the Self-Disclosure Reports.

XII. Modification

26. 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.

XIII. Costs

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

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

OZARK MOUNTAIN TECHNOLOGIES, INC.

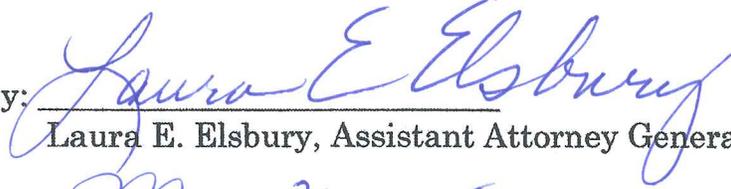
Signed By: 

Printed Name: Renee Skonier

Title: Executive Legal Director - CCO

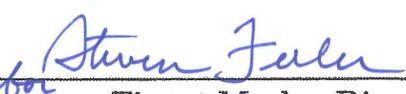
Date: May 7, 2015

MISSOURI ATTORNEY GENERAL'S OFFICE

By: 
Laura E. Elsbury, Assistant Attorney General

Date: May 22, 2015

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: 
Leanne Tippet Mosby, Director
Division of Environmental Quality

Date: June 2, 2015

SO ORDERED.



Honorable Kelly Wayne Parker

Date: 5 June 2015