

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Sunshine Hills Subdivision)
 and John Boevingloh)
)
)
)
)
 Proceeding under the)
 Missouri Clean Water Law)

Order No. 2014-WPCB-1158

NOTICE AND ORDER TO ABATE VIOLATIONS

SERVE BY UNITED POSTAL SERVICE NEXT DAY AIR

CERTIFIED MAIL # 7013 2250 0002 2840 0514
RETURN RECEIPT REQUESTED

TO: Mr. John Boevingloh
24800 Hwy P
Laquey, MO 65534

NOTICE IS HEREBY GIVEN that on this date the Department of Natural Resources has issued this Notice and Order to Abate (order) to Mr. John Boevingloh, under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically Sections 644.056 and 644.079 RSMo. Mr. Boevingloh, may be collectively referred to as the respondent for purposes of this order.

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, 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. Mr. Boevingloh is developing a 20.83 acre residential subdivision planned for 13 lots located in Laquey, Missouri. The legal description for the property is the SW ¼, of the SW¼, Section 7, Township 35 North, Range 12 West, in Pulaski County.

2. Pursuant to 10 CSR 20-6.030 (1)(D), the developer of any residential housing development shall obtain approval from the Department for the method of sewage treatment and disposal to be used in the development prior to the sale or lease of any lot, or the commencement of construction on any lot by the developer or any person. To obtain approval, the developer must submit to the Department office, a copy of the Geohydrologic Evaluation, the Soils Report, and Plat Map as described in this rule. The Geohydrologic Evaluation is described in 10 CSR 20-6.030(2), the Soils Report is described in 10 CSR 20-6.030(3), and the Plat Map is described in 10 CSR 20-6.030 (4).

3. On February 2, 2012, the Department received a preliminary plat, dated June 2008, for the Sunshine Hills Subdivision, which covered 20.83 acres. The plat indicated that the residential housing development was planned with 13 lots all less than 5 acres in size.

4. On February 14, 2012, the Department sent correspondence informing the respondent that because the subdivision has greater than 7 lots, less than 5 acres, the developer is required to obtain written approval from the Department for the method of wastewater treatment prior to the sale, lease, or the commencement of construction by the developer, pursuant to 10 CSR 20-6.030. In this correspondence, the Department requested that the respondent refrain

from selling or leasing of any further lots until the development is brought into compliance with the MCWL and its implementing regulations.

5. On April 1, 2013, the Department’s Division of Geology and Land Survey conducted a Geohydrologic Evaluation of the subdivision as requested by the respondent and provided a minimum acreage per lot of 3.6 acres.

6. On April 18, 2013, the Department received from Mr. Boevingloh the following documents: i) a Soils Report dated December 27, 2012, from Duane Viele; ii) the Residential Housing Development Geohydrologic Groundwater Evaluation Rating report for the evaluation conducted on April 1, 2013; and iii) an updated plat map which showed all 13 lots were less than 5 acres in size, as shown in Table 1 below. The plat map also indicated 7 lots had been sold and that individual subsurface soil absorption systems had been installed.

Table 1

Lot Number	Acreage	Sold	Developed
1	3.10	NO	NO
2	1.58	NO	NO
3	1.30	NO	NO
4	1.24	YES	YES
5	2.10	YES	YES
6	1.41	NO	NO
7	2.14	YES	YES
8	1.29	YES	YES
9	1.00	YES	NO
10	1.29	YES	YES
11	1.50	YES	YES
12	1.19	YES	YES
13	1.60	NO	NO

7. On or about May 23, 2013, the Department reviewed the revised plat map, Soils Report, and Geohydrologic Evaluation for the subdivision and concluded that following the

criteria set forth in 10 CSR 60.30 for the residential housing development, the minimum lot size appropriate to utilize individual onsite wastewater treatment systems on any individual lots within the Sunshine Hills Subdivision shall be 3.6 acres. According to the plat submitted to the Department lot numbers 1, 2, 3, 6, and 13 were under the respondent's control.

8. On June 25, 2013, Department staff conducted an inspection of the subdivision. During this inspection, staff met with Mr. Boevingloh and observed that 7 homes had been built within the subdivision on lot numbers 4, 5, 7, 8, 10, 11, and 12. Staff also documented that lot numbers 9 had been sold to the owners of lot number 8 and 10, and that a lot sold in the 2008 timeframe had been sold to a new owner.

9. Based upon the violations documented by Department staff during the June 25, 2013, inspection, the Department issued Notice of Violation (NOV) No. 19277SE to respondent on July 1, 2013, for failure to obtain approval from the Department for the method of sewage treatment prior to the sale or lease of any lot or the commencement of construction.

10. Since at least February 14, 2012, the Department has met with respondent and sent correspondence to the respondent explaining the requirements of the MCWL, the violations documented by the Department, and the steps necessary to correct the violations and achieve compliance with the MCWL and its implementing regulations. As of the date of this order, the respondent has failed to take the necessary steps required by the Department in order to bring the subdivision into compliance with the MCWL and its implementing regulations.

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

STATEMENT OF VIOLATIONS

Respondents have violated the MCWL and its implementing regulations as follows:

12. Failed to obtain approval from the Department of Natural Resources for the method of sewage treatment and disposal in the Sunshine Hills Subdivision prior to the sale or lease of any lot, or the commencement of construction on any lot by the developer or any person in violation of [Section 644.076.1, RSMo, and 10 CSR 20-6.030(1)(D)].

CORRECTIVE ACTIONS

13. Pursuant to Section 644.056 RSMo, the Department hereby orders the respondent to complete each of the following corrective actions:

14. The respondent is ordered to cease and desist selling, leasing, and/or constructing on any remaining lots in the subdivision under respondent's control until the respondent receives written approval from the Department for the method of sewage disposal pursuant to 10 CSR 20-6.030 or a Missouri State Operating Permit issued by the Department for a wastewater collection and treatment system to treat wastewater generated by the homes in the subdivision.

SUBMISSIONS

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

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

OTHER PROVISIONS

16. Any request for an extension of time or to otherwise modify this order may be considered on a case-by-case basis, if 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.

17. 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 MCWL and regulations, or any other source of law. Nor does this order resolve any future violations of this order or any law or regulation. Nothing herein this order compromises or affects the Department's right to seek additional relief or asserting additional claims for civil penalties for past or future violations of the MCWL. 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.

18. This order shall apply to and be binding upon respondent and any of his agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under; through, or for 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 respondents of their obligation to comply with this order.

19. For any plan or submittal from respondent 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 respondent. Disapproval may result in further orders or pursuit of other forms of relief by the Department. If the Department requires revisions, respondent 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 respondents shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

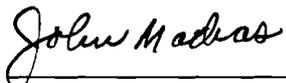
20. Anyone adversely affected by this decision may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. Appeal may be taken by the filing of a petition or notice of appeal with the AHC 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 West High Street
P.O. Box 1557
Jefferson City, Missouri 65102
phone: 573-751-2422
fax: 573-751-5018
website: www.oa.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 8th day of January, 2015 by:

DEPARTMENT OF NATURAL RESOURCES



John Madras, Director
Water Protection Program

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