

IN THE CIRCUIT COURT OF JEFFERSON COUNTY
STATE OF MISSOURI

STATE OF MISSOURI ex rel.)
Chris Koster, Attorney General of)
Missouri, the Missouri Department)
of Natural Resources,)
)
Plaintiff,)
)
v.)
)
FAULKNER PROPERTIES, INC.,)
)
Defendant.)

FILED
DEC 05 2012

HOWARD WAGNER
CIRCUIT CLERK

Case No. 09JE-CC00634

CONSENT JUDGMENT

Plaintiff, State of Missouri, at the relation of Chris Koster, Attorney General, and the Missouri Department of Natural Resources and Defendant Faulkner Properties, Inc., by and through counsel, hereby 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 (Chapter 644, RSMo) and its implementing regulations. 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.

This Consent Judgment is made, agreed upon and submitted to the Court for the purpose of settlement only, and upon the condition that the Court approves it in its entirety. In the event the Court does not approve of this Consent Judgment in its entirety and as agreed by the parties, it shall be null and void and have no effect in this or any other proceeding. The parties understand and agree that each and every term of this Judgment shall be enforceable by further order of this Court, and to that end, the Court retains jurisdiction of the matter in order to enforce each and every term of this Consent Judgment. The Court finds that the terms of this Consent Judgment protect the public's interest.

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 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 Faulkner Properties, Inc.
- c. "Department" means the Missouri Department of Natural Resources.
- d. "Facility" means that property formerly known as Selma Village Estates, consisting of approximately 52 acres, located near the intersection of I-55 and Hwy. 61, in Section 33, Township 40 North, Range 6 East, Jefferson County, Missouri.
- e. "Plaintiff" 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 herein and of the parties consenting hereto pursuant to § 644.051 RSMo (2000).¹ The Defendant's actions giving rise to this action took place in Jefferson County and venue is proper pursuant to § 644.051 RSMo.

IV. Parties Bound

¹ All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

4. The provisions of this Order 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 Law or regulations or under federal laws, or regulations, except as 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 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 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 State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law or regulations promulgated under its authority.
- d. The Plaintiff 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 agrees and 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.

VIII. Civil Penalty

8. Defendant consents to the entry of judgment in favor of the Plaintiff for a civil penalty of \$15,000.00, of which \$10,000.00 shall be suspended in accordance with paragraph 11. Defendant hereby authorizes entry of this judgment against them and in favor of the Plaintiff for this sum.

Defendant has agreed to pay the upfront civil penalty of \$5,000.00 by check made payable to the "*State of Missouri (Jefferson County)*." Within 30 days from the Court's entry of this Consent Judgment, Defendant will mail the check to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

9. Suspended Civil Penalty. Ten Thousand Dollars (\$10,000.00) of the total penalty of \$15,000.00 shall be suspended upon the condition that Defendant Faulkner Properties, Inc. complies with the Missouri Clean Water Law and its implementing regulations for a period of two years from the entry of this Consent Judgment. Once a violation of the Missouri Clean Water Law is documented by the Missouri Department of Natural Resources, the Missouri Attorney General's Office shall send a written demand for the suspended penalty to Defendant Faulkner Properties, Inc. Defendant Faulkner Properties, Inc. shall have fifteen (15) days from its receipt of the written demand to submit the suspended penalty in the manner described in paragraph 11. The suspended penalty provided in this Consent Judgment shall be in addition to any other rights, remedies, or sanction available to Plaintiff for any violation of this Consent Judgment or applicable law, including but not limited to seeking civil penalties and injunctive relief against the Defendant for any future violations of the Missouri Clean Water Law.

XI. Notices and Submittals

10. Whenever under the terms of this Consent Judgment that notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing of another individual designated to receive such communications. Notice to the individuals listed below or such other individuals designated pursuant to the foregoing, in writing and hand-delivered or sent by registered or certified mail, postage prepaid, shall constitute complete satisfaction of any notice requirement of the Consent Judgment.

To the Missouri Department of Natural Resources:

Paul Dickerson
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102
573-751-7624

To the Attorney General's Office:

Jennifer S. Frazier
Assistant Attorney General
Agriculture and Environment Division
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102
Voice: 573-751-8370
Fax: 573-751-8796

XIV. Modification

11. 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.

XV. Costs

12. Each party shall bear their own costs.

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

FAULKNER PROPERTIES, INC.

By: Roger Faulkner

Title: President

Date: 10/22/12

MISSOURI ATTORNEY GENERAL'S OFFICE

Jennifer S. Frazier
By: Jennifer S. Frazier
Assistant Attorney General

Date: 11/5/12

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Alan Reinkemeyer
By: Alan Reinkemeyer, Acting Director
Division of Environmental Quality

Date: November 21, 2012

SO ORDERED.

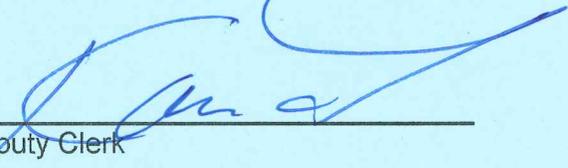
Robert S. Wilkins
Circuit Judge

Date: Dec 7, 2012

I certify and attest that the above is a true copy of the original record of the Court in case number 09JE-CC00634 as it appears on file in my office.

Issued 12-7-12

Howard Wagner, Circuit Clerk
Jefferson County Circuit Court

By 
Deputy Clerk

