

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI ex rel.,)
CHRIS KOSTER, Attorney General of)
Missouri, and the MISSOURI)
DEPARTMENT OF NATURAL)
RESOURCES,)

Plaintiff,)

v.)

KARON ROWE d/b/a PEPPER'S PIZZA,)

Defendant.)

Case No. 09BA-CV01821

2011 DEC 29 11:19:04
ALL PROCEEDINGS

CONSENT JUDGMENT

Plaintiff, State of Missouri, at the relation of Chris Koster, Attorney General, and the Missouri Department of Natural Resources and Defendant Karon Rowe d/b/a Pepper's Pizza, 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. 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 the Missouri Clean Water Law 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 Karon Rowe d/b/a/ Pepper's Pizza.
- c. "Department" means the Missouri Department of Natural Resources.
- d. "Site" means Pepper's Pizza, located at 4515 North Highway 763, Columbia, Missouri 65202.
- e. "Plaintiff" means the State of Missouri on the relationship of Attorney General Chris Koster, the Department and the Missouri Clean Water Commission.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to § 644.076.1, RSMo (2000).¹ The subject matter of this action involves the Missouri Clean Water Law, Chapter 644, RSMo, and its implementing regulations. The Defendant's actions giving rise to this action took place in Boone County and venue is proper pursuant to § 644.076.1, RSMo.

IV. Parties Bound

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 Clean Water Law or its implementing

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

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:

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 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 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.

8. In further compromise and satisfaction of the above-referenced claimed violations, Defendant agrees to comply with the following schedule of compliance:

a. Within sixty (60) days of signing this Consent Judgment, Defendant shall submit an annexation and rezoning request for the site to the City of Columbia;

b. Within thirty (30) days of the entry of this Consent Judgment, Defendant will submit to the Department's Northeast Regional Office a completed "Form B – Application for Construction or Operating Permit for Facilities Which Receive Basically Domestic Waste" for reissuance of Missouri State Operating Permit (MSOP) number MO-0121215 . Upon re-issuance of the MSOP, Defendant will maintain compliance with the permit terms and conditions and the Missouri Clean Water Law, Chapter 644, RSMo, and regulations promulgated thereunder."

c. Within one hundred and twenty (120) days of receiving approval by the City of Columbia for Defendant's annexation request, Defendant shall acquire an easement from neighboring property owners for the purpose of building a sewer line connection from the site to the City of Columbia's sewer system;

d. Within six (6) months of obtaining an easement, Defendant shall complete construction of the sewer line connecting the site to the City of Columbia's sewer system;

e. Upon completion of the sewer line to the City of Columbia, Defendant shall immediately cease operation and use of the waste water treatment facility located on site; and

f. Within thirty days of connecting to the City of Columbia's sewer system, Defendant shall submit an approvable closure plan to the Department for the existing lagoon upon which DNR may approve, disapprove or approve with modifications.

g. Within one hundred and twenty (120) days of the Department's approval of the closure plan, complete proper closure of the existing lagoon located at the site in accordance with the Department approved closure plan.

9. Upon completion of sections a through g of paragraph 8, Defendant will notify the Department of completion.

VII. Civil Penalty

10. Defendant consents to the entry of judgment in favor of the Plaintiff for a civil penalty of Eighteen Thousand Dollars (\$18,000.00). Defendant hereby authorizes entry of this judgment against her and in favor of the Plaintiff for this sum, of which Thirteen Thousand Dollars (\$13,000.00) shall be suspended as described in paragraph 11. Defendant has agreed to pay the portion of the civil penalty that is not suspended by check made payable to the "*State of Missouri (Boone County)*." Upon signing of this Consent Judgment by Defendant, Defendant will mail the check and a copy of the Consent Judgment to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. The Attorney General's office may hold or deposit the check consistent with its internal policies until such time as the consent judgment is entered by the Court. After entry by the Court, the Attorney General's Office will assure that the payment is credited to the proper account.

11. Suspended Civil Penalty. Thirteen Thousand Dollars (\$13,000.00) of the total civil penalty of Eighteen Thousand Dollars (\$18,000.00) shall be suspended upon the condition that Defendant complies with the Missouri Clean Water Law and its implementing regulations for a period of two (2) years from the entry of this Consent Judgment. Once a violation of the Missouri Clean Water Law or implementing regulations 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. Defendant shall have fifteen (15) days from its receipt of the written demand to submit the suspended penalty in the manner described in paragraph 10. The suspended penalty provided in this Consent Judgment shall be in addition to any other rights, remedies, or sanction available to State for Defendant's violation of this Consent Judgment or applicable law.

VIII. Stipulated Penalties

12. 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. \$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.

13. 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 (Boone County School Fund)*" and mail, 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.

14. 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.

IX. Notices and Submittals

15. 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:

Mary Ann Sutter
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102
Voice: 573-522-4018
Fax: 573-522-9920

To the Attorney General's Office:

Sarah Mangelsdorf
Assistant Attorney General
Agriculture and Environment Division
State of Missouri Office of Attorney General
207 W. High Street
Jefferson City, Missouri 65102
Voice: 573-751-8370
Fax: 573-751-8796

X. Modification

16. 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

17. 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.

KARON ROWE.

Karon L. Rowe
Name

Title: owner

Date: 6-03-11

MISSOURI ATTORNEY GENERAL'S OFFICE

Sarah Mangelsdorf
By: Sarah Mangelsdorf
Assistant Attorney General

Date: 6-9-11

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Steven Tuler
for By: Leanne Tippett Mosby, Director
Division of Environmental Quality

Date: 6/20/2011

SO ORDERED.

[Signature]
Circuit Judge
Date: 6-24-11