

IN THE CIRCUIT COURT OF PULASKI COUNTY,
STATE OF MISSOURI

FILED

RACHELLE K. BEASLEY

STATE OF MISSOURI ex rel.,)
Attorney General Chris Koster,)
the Missouri Department of Natural)
Resources, and the Missouri Clean)
Water Commission,)
Plaintiff,)

FEB 27 2013

CIRCUIT CLERK & EX. OFFICIO
RECORDER OF DEEDS
PULASKI COUNTY, MISSOURI

v.)

Case No. 10PU-CV01339

FOUR J LAND AND CATTLE)
COMPANY)

and)

HIGHWAY H UTILITIES, INC.,)

Defendants.)

Consent Judgment

Plaintiff, State of Missouri, at the relation of Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendants Four J Land & Cattle Company and Highway H Utilities, 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 Defendants 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 have consented to the entry of this Consent Judgment, and before the taking of any testimony and upon the pleadings, the Court hereby **ORDERS, ADJUDGE AND DECREES** 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 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. "Department" means the Missouri Department of Natural Resources.

c. "MOCA Duplex" means the Hunter's Point MOCA Duplex Subdivision No. 3 (MOCA) Development located in Pulaski County, Missouri. "Defendants" means Four J Land & Cattle Company and Highway H Utilities, Inc.

d. "Permit" means Missouri State Operating Permit no. MO-0130249 associated with the wastewater treatment facility serving Northern Heights Subdivision.

e. "Plaintiff" or "State" means the State of Missouri on the relationship of Attorney General Chris Koster, the Department and the Missouri Clean Water Commission.

f. "Site" or "Facility" means the residential subdivision and the wastewater treatment and collection facility serving the residential

subdivision known as the Northern Heights Estates Subdivision,
located at Hwy 17 North, Waynesville, Pulaski County, Missouri.

g. “Water Protection Program” or “WPP” means the Water
Protection Program of the Missouri Department of Natural Resources.

III. Jurisdiction

3. This Court has jurisdiction over the subject matter herein and of
the parties consenting hereto pursuant to § 644.075.1 RSMo.

IV. Parties Bound

4. The provisions of this Consent 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. Defendants 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, Defendants are relieved of liability for the violations alleged in the Petition.

6. The parties recognize that the State could file an additional claim against Defendants for violations of the Missouri Clean Water Law at the Hunter's Point MOCA Duplex Subdivision No. 3 (MOCA) Development, Pulaski County, Missouri as documented in Notice of Violation No. 19147SE, which is incorporated herein by reference. In compromise and satisfaction of the violations documented in NOV No. 19147SE, the parties agree that the terms of this Consent Judgment shall operate as a full release of the State's claims against Defendants for violations documented in NOV No. 19147SE upon Defendants' completion of the 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.

7. 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 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 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, Defendants' facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

VI. Injunctive Relief

8. Defendants agree and are 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.

For the Northern Heights Wastewater Treatment Facility

9. Defendants, in compromise and satisfaction of the allegations set forth in Plaintiff's Petition, agree and are ordered to within sixty (60) days of entry of this Consent Judgment, submit a Facility Plan to the Department for review and approval evaluating the Facility to determine what is causing exceedences of permitted effluent limitations at the Facility. The Facility Plan shall meet the requirements set forth at 10 CSR 20-8.110 and shall be developed by an engineer licensed to practice in the State of Missouri.

10. If the Facility Plan identifies the cause of effluent exceedences referenced in paragraph 10 as insufficient or improper operations and maintenance, then within thirty (30) days of receiving Department approval of the Facility Plan, Defendants shall submit to the Department one copy of an Operation and Maintenance Manual prepared by a professional engineer licensed to practice in the State of Missouri. The manual shall address the maintenance of the mechanical equipment, monitoring, recordkeeping, and operating procedures of the Facility, including the amount, frequency, and method of sludge disposal.

11. If the Facility Plan determines that the Facility requires modifications or improvements to achieve compliance with its Permit, then Defendants shall complete the following schedule to bring the Facility into compliance with the Permit:

- A. Within sixty (60) days of the Department's approval of the Facility Plan, Defendants shall submit to the Department a complete application for a construction permit, including the plans, specifications, appropriate fee, and if necessary, a Water Quality Review Sheet and Antidegradation Review application for recommended wastewater collection and treatment options identified in the Facility Plan.
1. Should the Department have comments on the construction permit application, Defendants shall respond to and address all such comments to the Department's satisfaction within fifteen (15) days of receipt of said comments;
- B. Within ninety (90) days of the Department's issuance of the construction permit, Defendants shall complete construction of the modifications or upgrades to the Facility as approved in the construction permit;
- C. Within fifteen (15) days of completing construction of the modifications or upgrades, Defendants shall submit to the Department, an engineer's Statement of Work Completed and a complete application to modify the Permit including the appropriate modification fee; and

D. Within fifteen (15) days of completing construction of the modifications or upgrades to the Facility, Defendants shall achieve compliance with all applicable effluent limitations contained in the Permit.

12. Defendants, in further compromise and satisfaction of the allegations set forth in Plaintiff's Petition, agree and are ordered to submit complete, accurate, and timely Discharge Monitoring Reports to the Department in accordance with the requirements and conditions of the Permit at all times in the future.

13. Within thirty (30) days of execution of this Consent Judgment, Defendants agree to submit, where possible, the as-built plans and specifications for existing sewer extensions that were connected to the Facility without first obtaining a Department-approved construction permit. At all times in the future, Defendants agree and are ordered to submit to the Department for review and approval complete construction permit applications, engineering plans and specifications, and appropriate fees for any future Sewer Extensions at the Facility. The Department may deny applications for construction of new Sewer Extensions on the basis that the Facility has violated effluent limitations in the Permit and the Missouri Clean Water Law by continuing to discharge contaminated wastewater.

For the Hunter's Point MOCA Duplex Subdivision No. 3

14. The parties consent to the inclusion of resolution of claims that could be made against Defendants for violations of the Missouri Clean Water Law at the MOCA Duplex Subdivision No. 3 as though these claims were filed in the State's Petition. Therefore, Defendants shall immediately cease and desist construction and/or installation activities of a sewer extension at the MOCA Duplex until Defendants have been issued and receive a construction permit from the Department authorizing construction and/or installation activities for said sewer extension. Defendants shall complete construction of the sewer main extension from the MOCA Duplex to an area-wide central wastewater treatment and collection system through the following schedule:

- A. Within one hundred and twenty (120) days of the Department's issuance of a construction permit, Defendants shall complete construction of the sewer extension in accordance with the Department approved engineering plans, specifications associated with the construction permit in order to convey wastewater from the MOCA Duplex to an area-wide central wastewater collection and treatment system.
- B. Within fifteen (15) days of completing construction of the sewer extension and wastewater from the MOCA Duplex is

conveyed to a central wastewater collection and treatment system, Defendants shall submit a Statement of Work Completed Form from an engineer licensed to practice in the State of Missouri, certifying that the sewer extension project has been completed in accordance with Department approved plans, specifications, and construction permit.

VII. Civil Penalty

15. Civil Penalty: Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty of One Hundred Thousand Dollars and no cents (\$100,000.00). Defendants hereby authorize entry of this judgment against them and in favor of the Plaintiff for this sum. The parties agree to suspend collection of Twenty Five Thousand Dollars and no cents (\$25,000.00) upon the condition that Defendants refrain from violating all conditions and requirements of this Consent Judgment during a two-year period following the final entry of this Consent Judgment in Pulaski County Circuit Court. Defendants agree to pay the up-front civil penalty of Seventy Five Thousand Dollars and no cents (\$75,000.00) by check made payable to the "*State of Missouri (Pulaski County)*."

16. Within one hundred and twenty days (120) of entry of this Consent Judgment, Defendants will mail the up-front civil penalty 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.

17. Suspended Civil Penalty: If Defendants violate a condition or requirement of this Consent Judgment during the two-year period following final entry of this Consent Judgment in Pulaski County Circuit Court, then Defendants shall pay the Twenty Five Thousand Dollar and no cents (\$25,000.00) suspended civil penalty upon demand by the Attorney General's Office in the manner provided in paragraph 9. Defendants shall have fifteen days to pay the suspended penalty upon receipt of the Attorney General's demand.

18. The parties agree that Defendants shall not be liable for the suspended penalty for violations of permitted effluent limitations for ammonia that occur during implementation of the schedule of compliance set forth in this Consent Judgment.

VIII. Stipulated Penalties

19. In the event that Defendants fail to comply with the requirements set forth in this Consent Judgment, Defendants shall be liable for stipulated penalties in accordance with the following schedule:

A. \$250.00 per day for each day of each violation up to thirty days.

B. \$500.00 per day for each day of each violation, from thirty-one days to sixty days.

C. \$1,000.00 per day for each day of each violation, beyond sixty days.

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

21. 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.

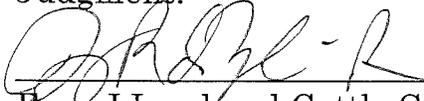
IX. Modification

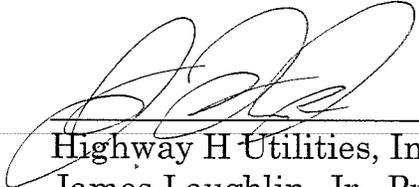
22. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among the parties, their successors and assigns and with the approval of the Court. All modifications shall be in writing and filed with the Court.

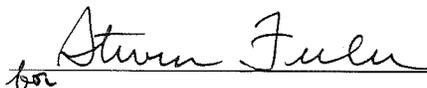
X. Costs

23. Defendants shall pay all court costs in this action, except that the parties will pay their own attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto executed this Consent Judgment:

 _____ Date _____
Four J Land and Cattle Company
Jay Robin Laughlin, President
19205 Salina Rd.
Waynesville, MO 65583

 _____ Date _____
Highway H Utilities, Inc.
James Laughlin, Jr., President
H Hwy-E, Outer Rd.
Waynesville, MO 65583

 _____ Date February 8, 2013
for Leanne Tippett Mosby, Director Division of Environmental Quality

Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

Jessica L. Blome

Date 1/31/13

Jessica L. Blome, Missouri Bar No. 59710
Assistant Attorney General
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102

IT IS SO ORDERED THIS 27th day of FEBRUARY 2013

[Signature]
Circuit Judge
Pulaski County Circuit Court

STATE OF MISSOURI }
COUNTY OF PULASKI } ss.
I, Rachelle Beasley, Circuit Clerk and ex-officio Recorder, Pulaski
County, Missouri, hereby certify the above to be a true copy of
Consent Judgment 10PL-CV01339
as the same appears of record (on file) in said court.
WITNESS my hand and the seal of said Court at office in
Waynesville, Mo., this 2/28/2013
RACHELLE BEASLEY
By *[Signature]*
Circuit Clerk & ex-officio Recorder
Pulaski County