

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI

IN THE MATTER OF:)	
)	
Blue Ridge Mobile Home Park)	
Wastewater Treatment Lagoon)	2012-WPCB-1133
)	
)	
SERVE:)	
)	
Richard B. Essman,)	
Noel R. and Richard B. Essman Trust)	

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) number 2012-WPCB-1133 by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because Blue Ridge Mobile Home Park (MHP) is in violation of the Missouri Clean Water Law (Law). Failure to comply with this AOC is, by itself, a violation of the Law Section 644.076.1, RSMo. Litigation may occur without further administrative notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements of the Law, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve Mr. Richard B. Essman of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any, including future, violations of the Law, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. The Noel R. and Richard B. Essman Trust owns Blue Ridge MHP, which is located off Highway 42 on Blue Ridge Road near Kaiser in Miller County. The MHP consists of approximately eight (8) homes/mobile homes, which are served

by an unpermitted wastewater lagoon (lagoon) that is in a state of disrepair. The lagoon is located in the NW 1/4, SE 1/4, Section 4, Township 39 North, Range 15 West, of the Bagnell Quadrangle of Miller County. Effluent from the unpermitted lagoon discharges over the berm, flowing onto neighboring property and into a tributary to Little Bear Creek, a tributary to the Osage River. Staff from the Department's Geology and Land Survey Division described the tributary to Little Bear Creek as having losing characteristics. The section of Little Bear Creek that the tributary empties into has also been classified as a losing stream.

- B. The tributary, Little Bear Creek and the Osage River are waters of the state as defined in Section 644.016(23) RSMo. The Osage River is listed in 10 CSR 20-7.031 Table H, as a class P stream as defined in 10 CSR 20-7.031(1)(F)(4).
- C. On August 20, 2009, Department staff performed an investigation in response to environmental concerns received by the Department on July 23, and August 12, 2009. Staff observed a failing, unpermitted lagoon discharging wastewater onto a neighboring property.
- D. On January 26, 2010, Department staff performed an investigation in response to an environmental concern. Staff observed the lagoon discharging over the northern berm onto a neighboring property.
- E. On February 3, 2010, the Department issued a Letter of Warning (LOW) to Mr. Noel R. Essman in response to the January 26, 2010, investigation in which staff noted that the lagoon was not permitted as required and thus was in violation of the Law and its implementing regulations.
- F. On March 26, 2010, the Department sent a letter to Mr. Noel R. Essman clarifying the exemption for single family residences and noting that Mr. Noel R. Essman's lagoon was serving multiple single family residences, and thus under the Department's jurisdiction. In the letter, staff noted that Mr. Noel R. Essman's lagoon did not possess the structural integrity to be deemed an acceptable system.
- G. On May 5, 2010, the Department received a signed copy of a schedule of compliance (SOC) from Mr. Noel R. Essman, indicating he would pursue installation of onsite systems approved by the Miller County Health Department (MCHD), and would close the lagoon. As part of the SOC, Mr. Noel R. Essman was to submit documentation indicating that he was working with the MCHD.
- H. On January 19, 2011, Department staff conducted a follow-up inspection of the MHP's lagoon. Inspectors found significant growth of woody vegetation on the lagoon's berm and noted a significant discharge overtopping the lagoon's northern

berm. The discharge contained solids representative of wastewater and flowed onto a neighboring property for over one hundred (100) meters.

- I. On February 10, 2011, the Department's Southwest Regional Office issued a Notice of Violation for violations of the Law and its implementing regulations observed by Department staff during the January 19, 2011, inspection.
- J. On April 18, 2012, the Department received electronic correspondence from Mr. Richard B. Essman stating that he would be drafting a lease/purchase agreement with a tenant whose home is not served by the lagoon. In this correspondence he proposed reducing the number of the homes in the MHP to one (1) which is not connected to the lagoon and closure of the lagoon by the end of 2012.
- K. On August 6, 2012, the Department received a copy of a lagoon closure plan from Mr. Richard B. Essman
- L. On August 30, 2012, the Department notified Mr. Essman by telephone that the lagoon closure plan had been approved and that he could proceed with the closure.
- M. On September 25, 2012, the Department received electronic correspondence stating that the lagoon had been closed in accordance with the Department approved lagoon closure plan. Attached to the electronic correspondence were electronic photographs showing the now closed lagoon.
- N. On October 3, 2012, the Department sent Mr. Essman correspondence stating that the lagoon closure plan had been approved.

III. CITATIONS AND CONCLUSIONS OF LAW

The Department finds that the following violations of the Law, Chapter 644, RSMo, and its implementing regulations have occurred:

- 1. Since August 20, 2009, operated, used or maintained a water contaminant source, (wastewater treatment lagoon) which discharges to a tributary to Little Bear Creek, a tributary to the Osage River, waters of the state, without a Missouri State Operating Permit, in violation of Sections 644.051.1(2) and 644.076.1, RSMo and 10 CSR 20-6.010 (1) (A) and (5) (A); and
- 2. The owners caused pollution of a tributary to Little Bear Creek, a tributary to the Osage River, waters of the state, or placed or caused or permitted to be placed water contaminants in a location where they are reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1 RSMo.

IV. AGREEMENT

- A. The Department and Mr. Richard B. Essman desire to amicably resolve all claims that might be brought against Mr. Richard B. Essman for the violations alleged above in Section III, Citations and Conclusions of Law, without Mr. Richard B. Essman admitting the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this Order, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of Mr. Richard B. Essman under this AOC. If Mr. Richard B. Essman sells or otherwise transfers the MHP, then Mr. Richard B. Essman shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of Mr. Richard B. Essman under this AOC in writing. In such event, Mr. Richard B. Essman shall provide 30 days prior written notice of such assumption to the Department.
- C. Mr. Richard B. Essman, in compromise and satisfaction of the Department claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of one thousand dollars and no cents (\$1,000.00). The payment shall be in the form of a certified check or cashiers check made payable to "Miller County Treasurer, as custodian of the Miller County School Fund." The check in the amount of one thousand dollars and no cents (\$1,000.00) is due and payable upon execution of this AOC by Mr. Essman. The check and signed copies of the AOC shall be delivered to:
- Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176
- D. Mr. Richard B. Essman shall not maintain more than two (2) single family residences on the property. One residence will be served by the existing on site wastewater treatment system and the second will be served by a wastewater treatment system pre-approved by the Miller County Health Department.
- E. Mr. Richard B. Essman shall cap the sewer connection from each mobile home as soon as the mobile home is moved from the pad and the sewer connection is accessible to be completed on or before January 1, 2013.

- F. Mr. Richard B. Essman agrees to submit a letter to the Department on or before January 31, 2013, stating that the MHP and lagoon have been closed and are no longer in operation.
- G. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed on time, Mr. Richard B. Essman shall notify the Department by telephone or electronic mail, identifying: i) the deadline that will not be completed; ii) the reason for failing to meet the deadline; and iii) a proposed extension to the deadline. Within five (5) days of notifying the Department, Mr. Richard B. Essman shall submit to the Department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of Mr. Richard B. Essman's right to request an extension and may be grounds for the Department to deny Mr. Richard B. Essman an extension.
- H. Should Mr. Richard B. Essman fail to meet the terms of this AOC, including any of the deadlines set out in paragraphs D through I above, the Department may impose stipulated penalties and Mr. Richard B. Essman agrees to pay such stipulated penalties, in the following amounts:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

Stipulated penalties will be paid in the form of a certified or cashiers check made payable to "State of Missouri (Jackson County School Fund)." Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

Accounting Program
 Missouri Department of Natural Resources
 P.O. Box 477
 Jefferson City, MO 65102-0176

- I. Nothing in this AOC forgives Mr. Richard B. Essman from future noncompliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forgo pursuing by any legal means any noncompliance with the laws of the State of Missouri.

- J. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they expressed or implied, oral or written, except those that are expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, expressed or implied.
- K. The effective date of the AOC shall be the date the Department signs the Order.
- L. Mr. Essman agrees to comply the Law, Chapter 644, RSMo, and the implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC number 2012-WPCB-1133, Mr. Richard B. Essman waives any right to appeal, seek judicial review, or otherwise challenge this order pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC number 2012-WPCB-1133 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

VI. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions pertinent to wastewater operations outlined in this AOC shall be directed to:

Ms. Kristi Savage-Clarke
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 2nd day of January, 201².



John Madras, Director
Water Protection Program
Missouri Department of Natural Resources

Agreed to and Ordered this 10 day of October, 2012.



Mr. Richard B. Essman
Noel R. and Richard B. Essman Trust, Owner
Blue Ridge Mobile Home Park

Copies of the foregoing served by certified mail to:

Mr. Richard B. Essman
Blue Ridge Mobile Home Park
19 Kingsbrook Lane
St. Louis, MO 63132-3005

- c. Ms. Diane Huffman
Chief, NPDES and Facilities Management Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII
901 North Fifth Street
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Mr. Jack McManus
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