

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.)

Case No. 11BA-CV04591

JAMES A. HEUER,)

Defendant.)

ENTRY OF FINAL DEFAULT JUDGMENT AGAINST DEFENDANT

This Court, upon review and after the hearing on Plaintiffs' Motion for Default Judgment against Defendant James A. Heuer, finds that:

1. The State's Petition in the above-styled action was filed with this Court on November 2, 2011.

2. Defendant James A. Heuer was subsequently personally served with a Summons and copy of the Petition on November 14, 2011.

3. On February 24, 2012 Defendant filed a motion to file an answer out of time, and an answer.

4. On January 28, 2013, Defendant failed to appear at a status



review settlement. On that day, the Court entered an order requiring Defendant to appear on February 25, 2013 and ordered that if Defendant failed to appear, as a sanction Defendant's pleadings would be stricken.

5. On February 25, 2013, Defendant appeared late and the Court accordingly struck his pleadings.

6. As a result, Defendant James A. Heuer has failed to file a timely Answer to any of the allegations pled in the Petition.

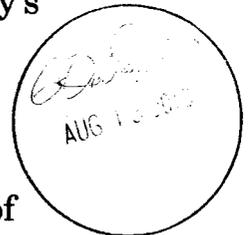
7. Supreme Court Rule 55.25(a) governs the timing of pleadings and provides in relevant part that:

A defendant shall file an answer within thirty days after the service of the summons and petition, except where service by mail is had, in which event a defendant shall file an answer within thirty days after the acknowledgment of receipt of summons and petition or return registered or certified mail receipt is filed in the case or within forty-five days after the first publication of notice if neither personal service nor service by mail is had.

8. Supreme Court Rule 55.09 explains the effect of the party's failure to file an answer:

Specific averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleadings. Specific averments in a pleading to which no responsive pleading is required shall be taken as denied.

9. In light of Defendant's failure to have an answer on file with this



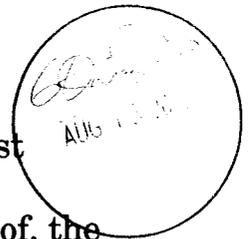
Court, Defendant is subject to the entry of an Order of Default Judgment pursuant to Supreme Court Rule 74.05. Supreme Court Rule 74.05 provides in pertinent part:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, upon proof of damages or entitlement to other relief, a judgment may be entered against the defaulting party. The entry of an interlocutory order of default is not a condition precedent to the entry of a default judgment.

10. By virtue of Defendant's failure to file a timely Answer or responsive pleading within thirty (30) days after service of the summons, Defendant is deemed in default and the facts alleged in Plaintiff's Petition are deemed admitted.

11. This Court has authority to issue an injunction and assess civil penalties against Defendant, pursuant to Supreme Court Rule 74.05(c), which states: "A default judgment may include an award of damages, other relief, or both."

12. This Court has the authority to enter a judgment against Defendant for a penalty up to \$10,000.00 for each day, or part thereof, the violation continued, and to enjoin future violations, under § 644.076.1 RSMo, as requested in Counts I, II and III of the petition.



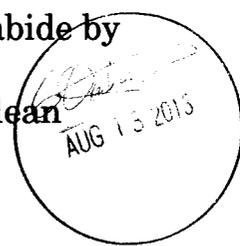
THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

13. The Court finds that the terms of this Judgment protect the public's interest.

14. For purposes of this decree, this Court has jurisdiction over the subject matter of this action and over the parties hereto. This Judgment covers matters alleged in the state of Missouri's Petition.

15. The provisions of this Judgment shall be binding upon the parties to this Judgment as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or will be acting in concert or privity with, on behalf of the parties to this judgment or their agents, servants, employees, heirs, successors, and assigns.

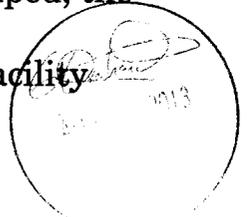
16. Defendant is permanently ordered and enjoined to obey, abide by and comply with this Judgment, Chapter 644 RSMo – the Missouri Clean Water Law – and the rules and regulations promulgated thereunder.



17. Specifically, Defendant is hereby ordered to implement the following schedule of compliance to bring the Defendant's waste water facility ("Facility") into compliance with the Missouri Clean Water Law and its

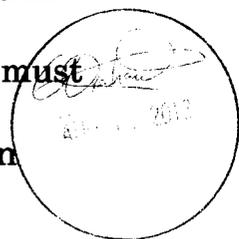
implementing regulations:

- a. Defendant shall immediately disconnect the gravity pipe currently connecting Defendant's Facility to Defendant's northwest neighbor's single cell lagoon;
- b. Defendant shall immediately pump and haul the wastewater from Defendant's Facility to a permitted facility with the capacity to accept the loads, in order to prevent a discharge of wastewater from the Facility into waters of the state and continue pumping and hauling the wastewater until such a time that the Defendant obtains a Missouri State Operating Permit ("Operating Permit") from the Department for the Facility;
- c. Defendant shall maintain all pumping and hauling receipts and make them available to the Missouri Department of Natural Resources ("Department") upon request. The pumping and hauling receipts shall include the number of gallons pumped; the date the wastewater was pumped; and the name of the facility accepting the loads;
- d. Within sixty (60) days of entry of this Judgment, Defendant shall submit to the Department, for review and comment, a complete



Antidegradation submittal prepared pursuant to the applicable Antidegradation Rule and Implementation Procedure for the State of Missouri 10 CSR 20-7.031(2);

- e. Within fifteen (15) days receipt of Department comments on the Antidegradation submittal, Defendant shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the Antidegradation submittal;
- f. Within sixty (60) days of Department approval of the Defendant's Antidegradation Review, Defendant shall submit to the Department for review and approval, a complete application for a construction permit ("Construction Permit") including plans and specifications signed and sealed by a professional engineer licensed to practice in the state of Missouri for upgrades or replacement of the Facility which will enable the effluent to comply with all applicable final effluent limitations contained in the Operating Permit. The Construction Permit application must also include a request for public notice of the Antidegradation Review and the operating permit. In the event the existing wastewater treatment lagoon will not be utilized in the Facility



upgrades, the Defendant shall submit a closure plan for the wastewater treatment lagoon, developed in accordance with the Standard Conditions, Part III, Section I, of a MSOP, to the Department for approval;

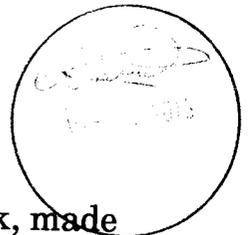
- g. Within fifteen (15) days receipt of Department comments on the Defendant's Construction Permit application, Defendant shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the Construction Permit application;
- h. Within one hundred and eighty (180) days of the date the Department issues a Construction Permit, Defendant shall complete construction of the approved upgrades;
- i. Within thirty (30) days of completing construction, Defendant shall submit to the Department, a Substantial Completion and Operable Wastewater Construction Form, signed, sealed and dated by a professional engineer registered in the State of Missouri certifying that the project is substantially complete and operable in accordance with Department approved plan and specifications. In addition, Defendant shall submit a complete



application requesting the issuance of the Operating Permit;

- j. Within thirty (30) days of completing construction of the improvements, Defendant's Facility must achieve compliance with the final effluent limitations contained in part "A" of the Operating Permit issued to the Defendant by the Department.
- k. If applicable, within one hundred and twenty (120) days of completing construction activities, complete proper closure of the wastewater treatment lagoon, in accordance with the Department approved closure plan as referenced in paragraph (f) from above, if the existing wastewater treatment lagoon will not be utilized in the upgrades.

18. Defendant is hereby ordered to immediately forward civil penalties in the amount of \$ 20,000 in the form of a certified check, made payable to the "State of Missouri (Boone County)," and delivered to Collections Specialist, P.O. Box 899, Jefferson City, MO 65102-0899. Execution for said sum to issue immediately.



19. This Judgment does not discharge any other potentially responsible parties.

20. All costs associated with this action shall be paid by Defendant.

IT IS SO ORDERED.



Circuit Judge

Dated this 13th day of Aug, 2013.

The Clerk shall provide a certified copy of this Judgment to Plaintiff.