

IN THE CIRCUIT COURT OF TEXAS COUNTY, MISSOURI

FILED

JAN - 8 2013

MARCI MOSLEY
Circuit Clerk
TEXAS COUNTY, MO

STATE OF MISSOURI ex rel.)
Attorney General Chris Koster and)
Missouri Department of)
Natural Resources,)

Plaintiff,)

v.)

Case No. 12TE-CC00292

HARVEY DAVIS d/b/a MIDWEST)
TRUCK STOP,)

Defendant.)

**JUDGMENT AND ASSESSMENT OF
CIVIL PENALTIES AGAINST DEFENDANT**

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

1. The State's Petition in the above-styled action was filed with this Court on July 20, 2012.
2. Defendant was subsequently served with a summons and copy of the Petition on August 16, 2012.
3. Defendant failed to file a timely Answer to any of the allegations pled in the Petition.
4. 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.

5. 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.

6. In light of Defendant's failure to file a timely Answer with this Court, Defendant is subject to the entry of a 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.

7. 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.

8. 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.”

9. Missouri Clean Water Law § 644.076, RSMo authorizes this court to assess civil penalties of up to Ten Thousand Dollars (\$10,000.00) per day for each day of each violation of the Missouri Clean Water Law and implementing regulations.

10. The Court hereby incorporates by reference the Affidavit of Kristi Savage-Clarke filed with this Court in support of the State’s Motion for Default Judgment, as though fully set forth herein.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

11. The Court finds that the terms of this judgment protect the public’s interest.

12. For purposes of this judgment, this Court has jurisdiction over the subject matter of this action and over the parties hereto. This Judgment covers matters alleged in Plaintiff, State of Missouri’s Petition.

13. 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.

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

15. Defendant is ordered and enjoined to implement a schedule of compliance to bring the Midwest Truck Stop into compliance with the Missouri Clean Water Law. All required reports, plans and specifications shall be prepared and sealed by a professional engineer licensed to practice in the State of Missouri pursuant to the following schedule:

a. With respect to the **Restaurant Lagoon**, Defendant shall upgrade or close the Restaurant Lagoon and construct a compliant wastewater treatment facility according to following schedule:

1. Within ninety (90) days of the Department's determination, Defendant shall submit to the Department for review and approval a complete

Antidegradation review prepared pursuant to the applicable Antidegradation Rule and Implementation Procedure for the State of Missouri;

2. Within fifteen (15) days receipt of Department comments on the Antidegradation review, Defendant shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the Antidegradation submittal;
3. Within ninety (90) days of Department approval of the Antidegradation Review, Defendant shall submit to the Department for review and approval an engineering report prepared by a professional engineer licensed to practice in the state of Missouri. The engineering report shall be developed pursuant to the requirements contained in 10 CSR 20-8.110 and if recommended in the engineering report, shall contain a closure plan for the Restaurant Lagoon that complies with the Standard Conditions, Part A, of Missouri's General State Operating Permit;
4. Within fifteen (15) days receipt of Department comments on the engineering report, Defendant shall

respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the engineering report;

5. Within ninety (90) days of the date the Department approves the engineering report, Defendant shall submit to the Department for review and approval, a complete application for construction permit including plans and specifications signed and sealed by a professional engineer licensed to practice in the state of Missouri for the upgrades or replacement of the Restaurant Lagoon which will enable the effluent to comply with the Law and its implementing regulations. The construction permit application must also include a request to public notice the Antidegradation review and the operating permit;
6. Within fifteen (15) days receipt of Department comments on the 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;

7. Prior to the expiration of the Construction Permit, Defendant shall complete construction of the approved upgrades; and
8. Within thirty (30) days of completing construction, Defendant shall submit to the Department a Statement of Work Completed Form, signed, sealed and dated by a professional engineer registered in the State of Missouri certifying that the project is complete and operable in accordance with Department approved plans and specifications. In addition, Defendant shall submit a complete application for a Missouri State Operating Permit.
9. Within sixty (60) days of connection to a compliant wastewater treatment facility, if applicable, Defendant shall complete closure of the Restaurant Lagoon in accordance with the Department approved closure plan as referenced above;
10. Within ninety (90) days of completing construction of the improvements, Defendant shall achieve compliance with the final effluent limitations contained in Part "A" of the Permit.

b. With respect to the **Truck Wash Lagoon**, Defendant shall employ a licensed engineer with the State of Missouri to determine whether the Truck Wash Lagoon contains water contaminants or has the potential to contain water contaminants. Defendant shall instruct his engineer to coordinate with the Department's Southwest Regional Office to identify contaminants for testing as well as a contaminant sampling plan. If Defendant's engineer concludes that the Truck Wash Lagoon does not contain water contaminants, Defendant's engineer shall submit a report with his conclusions to the Department. The Department reserves the right to reject or request amendment to the engineer's report.

i. If the Department concludes that the Truck Wash Lagoon does not contain water contaminants and is therefore unlikely to cause contamination to waters of the State, Defendant shall be released from any further obligation under this Judgment with respect to the Truck Wash Lagoon.

ii. If the Department concludes that the Truck Wash Lagoon is a water contaminant source, then Defendant shall submit a closure plan for the Truck Wash Lagoon to the

Department for review and approval, in the same manner provided in paragraph 7(A), above.

- c. Defendant shall complete this injunctive relief identified in paragraph 15 of this judgment on or before the expiration of one year from the date this judgment is entered in circuit court.

16. Defendant is hereby ordered to immediately forward civil penalties in the amount of \$20,000.00 in the form of a certified check, made payable to the "*State of Missouri (Texas)*," to Collections Specialist, P.O. Box 899, Jefferson City, MO 65102-0899. Execution for said sum to issue immediately.

17. This judgment does not discharge any other potentially responsible parties.

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

IT IS SO ORDERED.


Circuit Judge

Dated this 8 day of Jan, 2013.