

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

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

Plaintiff,)

v.)

Case No. 13BA-CV01095

MARK FITZGERALD and)
F & F PROPERTIES, L.L.C.)

Defendants.)

CONSENT JUDGMENT

Plaintiff, State of Missouri, at the relation of Attorney General Chris Koster, the Missouri Department of Natural Resources, and the Missouri Clean Water Commission and Defendants, Mark FitzGerald and F & F Properties, L.L.C., 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, RSMo¹) 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

¹ Unless expressly stated otherwise, all statutory references are to Missouri Revised Statutes, 2013.

want to terminate this controversy and consent to entry of this judgment without trial.

The Court is advised that the parties have consented to the terms in this Consent Judgment for settlement purposes only, and that their consent is conditioned upon the Court approving the Consent Judgment in its entirety. 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 Chapter 644 RSMo and the regulations adopted thereunder. In addition, the following terms are specifically defined:

- a. “Area-Wide Sewer Authority” or “Area-Wide Sewer Authority System” means either the City of Columbia sewer system or the Boone County Regional Sewer District, whichever has jurisdiction based upon the location of Defendants’ property.
- b. “Commission” means the Missouri Clean Water Commission.
- c. “Consent Judgment” means this Consent Judgment and all attachments, which are incorporated by reference and fully enforceable as terms of this Consent Judgment.
- d. “Defendants” means Mark FitzGerald and F & F Properties, L.L.C.
- e. “Department” means the Missouri Department of Natural Resources.
- f. “Facility” means the wastewater treatment facility serving F & F Properties, L.L.C., located at 6151 N. Wagon Trail Road, Columbia, Missouri 65202.
- g. “Permit” means the Missouri State Operating Permit No. MO-0124532 associated with the wastewater treatment facility serving F & F Properties, L.L.C.

h. “Plaintiff” means the State of Missouri, on the relationship of Attorney General Chris Koster, the Department, and the 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. The subject matter of this action involves the Missouri Clean Water Law (MCWL), Chapter 644 RSMo. At all relevant times, Defendant F&F Properties, L.L.C owned and operated the Facility in Boone County, MO, on which all alleged violations occurred; therefore, venue is proper pursuant to § 644.076.1 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. Defendants may request that the Attorney General's Office file a Satisfaction of Monetary Judgment with the Court after Defendants' final civil penalty payments.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under 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; and

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

VI. Injunctive Relief

7. Defendants agree and are ordered to comply with the Missouri Clean Water Laws §§ 644.006 – 644.150 RSMo, and its implementing regulations for any and all future activities in the state of Missouri.

8. Within thirty (30) days of the Court's entry of this Consent Judgment, Defendants agree to submit the missing annual Discharge Monitoring Reports (DMRs) to the Department for the years 2010, 2011, 2012, and 2013, or provide the Department with written explanation as to why the DMRs are unavailable. Provision of the written explanation will satisfy this paragraph if no DMRs are available for the above identified years.

9. Within thirty (30) days of the Court's entry of this Consent Judgment, Defendants agree to complete the following operation and maintenance repairs to the Facility:

- a. Provide a lockable gate on the perimeter fencing, in accordance with 10 CSR 20-8.020(11)(C)11.F;

- b. Place warning signs on all gates and all sides of the perimeter fence in accordance with 10 CSR 20-8.020(11)(C)11.G;
- c. Remove the deep-rooted vegetation from the lagoon berms, in accordance with 10 CSR 20-8.020(13)(A)3.G.

10. Within thirty (30) days of the Court's entry of this Consent Judgment, Defendants agree and are ordered to complete the following:

- a. Cap the outfall of the single cell wastewater treatment lagoon to collect and prevent the discharge of wastewater generated by the Facility;
- b. Pump and haul the wastewater from the lagoon to a permitted facility with sufficient capacity to accept the wastewater, as frequently as required to ensure prevention of all wastewater discharges; and
- c. Maintain pumping and hauling receipts, submitting the prior month's receipts to the Department by the tenth (10th) day of each month in which pumping occurs. Receipts shall include the wastewater pumping date, quantity of gallons pumped, name of the wastewater hauler, and name of the permitted facility accepting the wastewater.

11. Within thirty (30) days of the Court’s entry of this Consent Judgment, Defendants shall complete and submit, for the Department’s review and approval, one of the following options:

Option A. Provide written correspondence stating that Defendants will construct a sewer extension to transmit all Facility-generated wastewater to the Boone County Regional Sewer System (“Area-Wide Sewer Authority System”) and will fulfill all obligations to complete the sewer extension outlined in Paragraph 12 and its subparts; OR

Option B. Provide written correspondence stating that Defendants will upgrade or replace the existing wastewater treatment system by fulfilling all obligations contained in Paragraph 13 and its subparts; AND submit an engineering report, prepared and sealed by an engineer licensed to practice in the State of Missouri, recommending upgrades or replacement of the existing wastewater treatment system, as required by Missouri Clean Water Regulation 10 CSR 20-8.

Option A: Connection to the Area-Wide Sewer Authority System

12. If Defendants elect “Option A” to connect the Facility’s wastewater flow to an Area-Wide Sewer Authority System, Defendants agree

to complete construction of a sewer extension, adhering to and implementing to the following requirements:

- a. In accordance with Missouri Clean Water Regulation 10 CSR 20 Chapter 8, a registered professional engineer, licensed to practice in the State of Missouri, shall design and seal the construction plans for the sewer extension. The plans shall be submitted to the Department, in accordance with Paragraphs 12(d) or 12(e), as required. Defendants shall ensure that construction of the sewer extension is in accordance with said professional engineer's plans.
- b. Before construction commences on the sewer extension, Defendants shall obtain all necessary easements and approval from the Area-Wide Sewer Authority System accepting the connection, and provide the Department with a copy of the easements and connection agreement or contract.
- c. Defendants must provide the Department with a Closure Plan for the existing wastewater treatment lagoon, developed in accordance with Section H – Closure Requirements of “Part III – Sludge and Biosolids from Domestic and Industrial Wastewater Treatment Facilities” contained in the Standard Conditions for NPDES Permits issued by the Missouri Clean

Water Commission.. Timely submission of the Closure Plan will occur if submitted no later than Paragraph 14's deadline requirements.

- d. Defendants must obtain a construction permit from the Department, prior to construction on the sewer extension, if the sewer extension and collection system shall equal or exceed one thousand (1000) feet in length, or include more than two (2) lift stations. A completed permit application must include the design and engineering plans required by Paragraph 12(a) and payment of all application fees.
- e. If the sewer extension shall not equal or exceed one thousand (1000) feet in length, Defendants shall furnish the Department with an official, sealed copy of the engineering plans and specifications required by Paragraph 12(a), no less than thirty (30) days before construction commences.
- f. Defendants agree to complete the construction of the sewer service line and connect to the Area-Wide Sewer Authority within three hundred and sixty five (365) days from either the earlier of: 1) the date of issuance of a Department construction permit contemplated by Paragraph 12(a); or 2) the date of

approval from the Area-Wide Sewer Authority to connect to the system contemplated by Paragraph 12(b).

Option B: Upgrade/Replace the Facility's Existing Wastewater Treatment Lagoon

13. If Defendants elect "Option B" to upgrade or replace the Facility's existing wastewater treatment lagoon, Defendants agree to complete the following requirements within the prescribed deadlines:

- a. Within (30) days after Defendants receive written approval from the Department for the engineering report submitted in accordance with Paragraph 11, Option B, Defendants shall provide the Department with:
 - i. a complete antidegradation submittal, in accordance with the Missouri Antidegradation Rule and Implementation Procedure; and
 - ii. a letter from the Area-Wide Sewer Authority System, waiving preferential status under 10 CSR 20-6.010(3).
- b. Within fifteen (15) days after Defendants' receive any comments from the Department concerning 1) the engineering report required in Paragraph 11, Option B; or 2) the antidegradation submittal required in Paragraph 13(a)(i),

Defendants shall respond to the Department in writing, addressing all comments to the Department's satisfaction.

- c. Within thirty (30) days after the Department approves the engineering report and antidegradation submittal, Defendants shall submit for the Department's review and approval, a revised final engineering report to upgrade, replace, or eliminate the facility, and this report must contain:
 - i. a completed construction permit application, including required permit fees, and a design summary, plans, and specifications that are prepared, signed, and sealed by a professional engineer licensed to practice in Missouri;
 - ii. a completed Antidegradation Review Public Notice application with the Water Quality Review Sheet/Antidegradation Review Preliminary Determination;
 - iii. a copy of the Area-Wide Sewer System's waiver of preferential status, required by Paragraph 13(a)(ii); and
 - iv. a Closure Plan for the existing lagoon, developed in accordance with Section H – Closure Requirements of “Part III – Sludge and Biosolids from Domestic and Industrial Wastewater Treatment Facilities” contained

in the Standard Conditions for NPDES Permits issued by the Missouri Clean Water Commission. Timely submission of the Closure Plan will occur if submitted no later than Paragraph 14's deadline requirements.

- d. Within fifteen (15) days after receiving the Department's comments on the construction permit application, plans, and specifications, Defendants shall provide a written response to the Department, addressing all of the Department's comments on the construction permit application, plans, and specifications to the Department's satisfaction.
- e. Within one-hundred twenty (120) days from the date the Department issues a construction permit for upgrades or replacement of the existing wastewater treatment facility, Defendants shall complete construction, in accordance with Department-approved plans and specifications, and achieve compliance with the applicable operating permit.
- f. Within fifteen (15) days of completing construction, Defendants shall submit to the Department a Statement of Work Completed Form that is signed, sealed, and dated by a professional engineer, registered and licensed to practice in the State of Missouri, and a complete application to modify

and renew Missouri State Operating Permit No. MO-0124532 with applicable fee. The form shall certify that Defendants completed the project in accordance with Department approved plans and specifications.

Closure of the Facility's Existing Wastewater Treatment Lagoon

14. Whether Defendants elect to connect to the Area-Wide Sewer Authority System ("Option A") or complete Department-approved upgrades to the Facility's existing wastewater treatment lagoon ("Option B"), Defendants must submit a lagoon closure plan ("Closure Plan for the Department's review and approval by January 15, 2014 or sixty (60) days following the Court's entry of this Consent Judgment, whichever occurs later. Defendants must develop the Closure Plan in accordance with Section H – Closure Requirements of "Part III – Sludge and Biosolids from Domestic and Industrial Wastewater Treatment Facilities" contained in the Standard Conditions for NPDES Permits issued by the Missouri Clean Water Commission. These requirements are attached as "Exhibit 1". Within fifteen (15) days of receiving the Department's comments on the Closure Plan, Defendants shall respond to the Department in writing, addressing all of the Department's comments on the Closure Plan, to the Department's satisfaction.

15. Within ninety (90) days of either connecting to the Area-Wide Sewer Authority System or completing Department-approved upgrades, Defendants shall:

- a. Complete closure of the existing wastewater treatment lagoon pursuant to a Department-approved Closure Plan, as referenced in Paragraphs 12(c) and 13(c)(iv);
- b. Stabilize the disturbed area with perennial vegetation containing seventy (70) percent fully established plant density over one-hundred (100) percent of the disturbed area; and
- c. Submit to the Department written certification that the Facility was closed in accordance with the Department-approved closure plan.

16. Defendants agree and are ordered to comply with all requirements and conditions of the Permit, including, but not limited to remitting annual permit fees; submitting accurate, timely, and complete DMRs; and submitting Annual Sludge Reports to the Department, until termination of the Permit.

VII. Civil Penalty

17. Defendants hereby authorize and consent to the entry of judgment against them, awarding a civil penalty of \$9,863.00 to the Plaintiff.

The parties agree that \$5,363.00 of the civil penalty of \$9,863.00 shall be suspended and stayed as described in Paragraph 19.

18. Defendants agree to pay the remaining \$4,500.00 in civil penalties as follows in ^{four (4) THC} ~~eleven (11)~~ separate payments, to wit: a lump sum payment of \$2,500.00 within forty-five (45) days of the entry of the Consent Judgment and then by three (3) payments thereafter paid by the following schedule: \$667.00 and due by February 1, 2015; \$667.00 due by May 1, 2015; and the final payment of \$666.00 due by August 1, 2015. For each payment, Defendants shall send, along with the first page of this Consent Judgment, a check or money order made payable to the "State of Missouri (Boone County)" to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

19. Suspended Civil Penalty: \$5,363.00 of the civil penalty shall be suspended upon the condition that Defendants comply with the Missouri Clean Water Law and its implementing regulations for a period of either, whichever is shortest (1) two (2) years from the entry of this Consent Judgment, or (2) until the Business successfully completes the requirements of Section VI. The suspended penalty provided in this Consent Judgment shall be in addition to any other rights, remedies, or sanction available to the State for Defendants' violation of this Consent Judgment or applicable law.

20. If a violation as described herein of the Missouri Clean Water Law is documented by the Missouri Department of Natural Resources, the Defendants shall have thirty (30) days' from the receipt of notice of the violation to cure the documented violation to the Department's satisfaction. To provide proof of cure, Defendants shall submit any necessary documentation to Department and the Department may inspect the Facility to confirm the cure and compliance.

21. If thirty (30) days elapse and the violation is not cured, the Missouri Attorney General's Office may send a written demand for the suspended penalty to Defendants. Defendants shall have fifteen (15) days from its receipt of the written demand to submit the suspended penalty by method described in Paragraph 19 above.

22. Violations of the Missouri Clean Water Law that may trigger a suspended penalty shall not include violations of deadlines within the Schedule of Compliance in Section VI.

VIII. Stipulated Penalties

23. 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:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100 per day

31 to 90 days	\$200 per day
91 days and above	\$300 per day

24. Stipulated Penalties shall not be triggered by delays caused from obtaining the necessary easement(s) to connect the wastewater flow from the Facility to the regional wastewater system, if such delays result in Defendants' inability to timely adhere to the schedule of compliance in Section VI Injunctive Relief.

25. The Department may grant an extension of a deadline within Section VI and Schedule of Compliance. To request an extension, due to an inability to meet a deadline, Defendants should submit to the Defendant a request for an extension of the specific deadline that (1) provides notice to the Department a reasonable time ahead of the pending deadline, and (2) provide a reasonable logistical justification for the delay (including, but not limited to, the unavailability of necessary parts or equipment, inclement weather, delay in the issuance of a necessary permit, etc.)

26. 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 via check made payable to the "State of Missouri (Boone 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.

The inclusion of stipulated penalty provisions in this Consent Judgment, and payment of stipulated penalties, does not limit the State's right to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a statutory violation, stipulated penalties may be collected in addition to statutory penalties levied for those violations.

IX. Notices and Submittals

27. Whenever the terms of this Consent Judgment require that notice be given, or require the forwarding of a report or other document by one party to another, it shall be directed to the individuals addressed below, unless those individuals or their successors provide written notice of another individual designated to receive such communications. Complete satisfaction of any notice requirements under this Consent Judgment shall consist of written notice to these listed individuals, or such other individuals designated under the foregoing, hand-delivered or sent by registered or certified mail, postage prepaid.

To the Missouri Department of Natural Resources:

Joan Doerhoff
Missouri Department of Natural Resources
P.O Box 176
Jefferson City, MO 65102
Voice: 573-522-3779

To the Attorney General's Office:

Travis M. Clements, Assistant Attorney General
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102
Voice: 573-751-8816
Fax: 573-751-8796
travis.clements@ago.mo.gov

X. Modification

28. 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.

29. If the Parties anticipate a term of the injunctive relief, Section VI, cannot be met within the scheduled deadline, a request for modification may be made to the Attorney General's Office using the notice and submittal information as stated above in Section IX .

XI. Costs

30. Defendants shall pay all court costs in this action.

IN WITNESS WHEREOF, the parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.

F & F PROPERTIES, L.L.C.

By: *Mark Fitzgerald*, member

Date: 9-10-2014

MARK FITZGERALD

By: *Mark Fitzgerald*

Date: 9-10-2014

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Leanne Tippet Mosby
for Leanne Tippet Mosby, Director
Division of Environmental Quality

Date: 9/12/14

ATTORNEY GENERAL CHRIS KOSTER

Travis M. Clements
Travis M. Clements
Assistant Attorney General

Date: 9/11/14

SO ORDERED this 9/16/2014, 2014.

Gary Oxenhandler

Honorable Gary Oxenhandler, Division II

COURT SEAL OF



BOONE COUNTY