

**BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF MISSOURI**

**IN THE MATTER OF:**

Green Hills Mobile Home Park  
Wastewater Lagoon

No. 2014-WPCB-1194

**SERVE:**

Burks Properties, LLC  
dba Green Hills Mobile Home Park

**ABATEMENT ORDER ON CONSENT**

**I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuance of this Abatement Order on Consent (AOC) No. 2014-WPCB-1194 by the Missouri Department of Natural Resources is a formal administrative action by the State of Missouri and is being issued because the wastewater lagoon serving Green Hills Mobile Home Park is in violation of the Missouri Clean Water Law (MCWL) and its implementing regulations. This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the MCWL. Litigation may occur without further 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 MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve Burks Properties, LLC (Burks Properties) of liability for, or preclude the Department from, initiating a judicial enforcement action to recover civil penalties for any future or unknown violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

**II. FINDINGS OF FACT**

A. Mr. Fred Burks is the managing member of Burks Properties. Burks Properties owns and operates Green Hills located on North Highway VV approximately one (1) mile north of Columbia, Missouri. Green Hills is a mobile home park consisting of approximately 80 mobile home pads served by a single-cell wastewater lagoon with a surface aerator. The single-cell lagoon is located in the SE ¼, S0E ¼, NE ¼, of

Section 11, Township 49 North, Range 13 West, in Boone County, and operates pursuant to Missouri State Operating Permit (MSOP) number MO-0086037. The lagoon has a design population equivalent of 180, a design flow of 12,400 gallons per day (gpd) and an actual flow of 15,660 gpd. The lagoon discharges effluent through Outfall No. 001 to an unnamed tributary to Rocky Fork Creek, approximately 0.7 miles upstream from Rocky Fork Creek.

- B. Rocky Fork Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (27), RSMo.
- C. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- D. MSOP number MO-0086037 was issued to Burks Properties on March 16, 2007, and expired on March 15, 2012. On May 2, 2013, the Department received an application to renew MSOP number MO-0086037, and on July 26, 2013, the Department initiated a 30-day public notice period for the renewal MSOP number MO-0086037. The 2007 MSOP contained effluent limitations for parameters listed in Part "A," and pursuant to the Permit, Burks Properties was required to submit to the Department monthly discharge monitoring reports (DMRs) containing effluent sample analysis results for those parameters. The 2007 MSOP also contained a Schedule of Compliance (SOC) for Burks Properties to submit to the Department, by September 17, 2007, an engineering report that evaluated the ability of the lagoon to adequately treat the flows entering the lagoon and to determine if lagoon upgrades or flow mitigation were necessary in order to ensure that general water quality criteria were not violated. The SOC also required Burks Properties to upgrade the lagoon to enable the effluent to comply with limitations for Fecal Coliform (FC), which took effect on March 14, 2012. To date, the Department has not received an engineering report evaluating the flow, or an engineering report or construction permit application for disinfection upgrades.
- E. On February 18, 2009, Department staff met with Mr. David Bennett, PE for Engineering Surveys and Services, and Mr. Burks, to discuss actions required to bring Green Hills into compliance with the Permit. During the meeting, Mr. Burks stated that Burks Properties would soon be entering into a connection agreement with the Boone County Regional Sewer District (BCRSD), and that Green Hills would be connected to BCRSD in 2011. Department staff requested that Mr. Bennett submit a letter to the Department explaining that Green Hills would be connected to BCRSD instead of upgrading to handle the flow and to meet disinfection limits. Department staff stated that this letter with a PE seal would suffice for the engineering report that was due by September 17, 2007, pursuant to the SOC in the 2007 MSOP.
- F. On March 2, 2009, the Department received a seal-stamped letter from Mr. Bennett stating that Green Hills would be connected to the BCRSD as soon as it became available and close the lagoon currently serving Green Hills. Additionally, Mr. Bennett stated that BCRSD planned to provide service in the Rocky Fork Creek

watershed in 2011, and that Mr. Burks understood Burks Properties' obligation to continue operating the existing lagoon pursuant to the requirements of the Permit until connection to BCRSD was complete. Lastly, the letter stated that Burks Properties would execute a connection agreement with the BCRSD and submit a copy of the agreement upon its execution.

- G. DMRs submitted to the Department by Burks Properties indicate that the lagoon's effluent exceeded the permitted limits for Biochemical Oxygen Demand (BOD) in November 2008; February, March, June, August, September and December 2009; January, February, and December 2010; April and July 2011; March, October, and December 2012; and January 2013. DMRs also indicate that the lagoon's effluent exceeded the permitted limits for Total Suspended Solids (TSS) in March, April, and June 2009; February, April, November, and December 2010; April and June 2011; March 2012; and July 2013. Additionally, DMRs indicate that the lagoon's effluent exceeded the permitted limits for FC in April, May, July, August, September, and October 2012 and April and May 2013. To date, the Department has not received a value for flow on the July 2011 DMR.
- H. On November 18, 2011, Department staff conducted a compliance inspection at the lagoon, and observed that the facility did not have warning signs on the south, east, and west sides of the perimeter fence, vegetation around the lagoon had not been mowed routinely, rodent holes on the berms, and sludge in the bottom of the ditch receiving the discharge. The inspector also observed that the surface aerator was non-operational, a thick layer of duckweed covering the north side of the lagoon, and a wheelchair and a big wheel toy floating in the lagoon.
- I. On December 19, 2011, the Department sent Burks Properties an inspection report and Notice of Violation number NER2011112208062916 documenting violations observed during the November 18, 2011, inspection, including failure to apply for a renewal of the 2007 MSOP at least 180 days before its expiration, failure to comply with the SOC for disinfection upgrades, and discharging water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards.
- J. On February 24, 2012, the Department received a letter from Mr. Burks stating that Burks Properties still plans to connect Green Hills to the BCRSD, but in the interim he installed new warning signs on the perimeter fence, repaired holes in the berms, removed foreign objects from the lagoon, repaired the aerator, and ordered a replacement aerator.
- K. On March 16, 2012, the Department received a copy of a letter sent by Mr. Brian McCartney, Brydon, Swearngen & England, P.C., to the BCRSD requesting information about establishing an agreement for Green Hills to connect to the BCRSD.

- L. On November 2, 2012, Department staff completed a compliance assistance visit at the lagoon, and provided Mr. Burks with guidance for improving treatment efficiency at the lagoon, including improving aeration and duckweed control, and proper lagoon closure.
- M. On March 13, 2013, the Department received a letter from Mr. McCartney stating that Mr. Burks planned to implement an aggressive management strategy to remove and control duckweed at the lagoon in Spring 2013 and reposition the lagoon's aeration system to improve mixing at the lagoon. The correspondence also indicated that a camera study of the lagoon's collection system was completed in Fall 2012, and an evaluation, including recommendations for repairs and upgrades necessary to prevent inflow and infiltration into the collection system, was submitted to the BCRSD.
- N. On May 17, 2013, the Department received plans and specifications from Shafer, Kline & Warren, Inc. on behalf of BCRSD for construction of a new oxidation ditch treatment facility equipped with two (2) secondary clarifiers, sludge pumps and ultraviolet disinfection equipment just north of the City of Columbia in Boone County, Missouri. On June 5, 2013, the Department issued construction permit (CP) number CP0001480 to BCRSD for construction of a new Rocky Fork Wastewater Treatment Facility. The Department issued a Notice to Proceed with the construction project on August 5, 2013, and it listed the projected final completion date as September 5, 2014. The CP is set to expire June 4, 2015.
- O. On July 23, 2013, Burks Properties entered into an *Agreement for Provision of Wastewater Collection and Treatment Services* with the BCRSD. The Agreement requires Burks Properties to retain a qualified engineer to develop plans and specifications for any necessary improvements to Green Hills' existing wastewater collection system, and for construction of a new sanitary sewer collection system and interceptor sewer necessary to connect Green Hills to the future Rocky Fork Water Reclamation Facility which shall be constructed by BCRSD.
- P. On August 13, 2013, Department staff conducted a compliance inspection at the lagoon, and observed that the surface aerator was non-operational. Additionally, Department staff observed sanitary products and sludge approximately six (6) inches in depth below Outfall 001 and continuing at least fifty (50) yards downstream in the receiving tributary.
- Q. On September 10, 2013, the Department sent Burks Properties an inspection report and Notice of Violation number NER2013081514515346 documenting violations observed during the August 13, 2013, inspection.
- R. On September 12, 2013, the Department received a written response from Mr. McCartney, on behalf of Burks Properties, stating that the sludge accumulated below Outfall 001 was removed and disposed of on August 13, 2013, and the aerator was repaired on August 14, 2013. Enclosed with the response was a licensed liquid waste

hauler load ticket and receipt from Pro Pumping and Hydrojetting dated August 13, 2013.

- S. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

### **III. CONCLUSIONS OF LAW**

The Department alleges the following violations of the MCWL and its implementing regulations have been committed by Burks Properties at Green Hills:

1. Failed to apply for renewal of MSOP number MO-0086037 at least 180 days before expiration of MSOP number MO-0086037, in violation of Sections 644.051.11 and 644.076.1, RSMo, and 10 CSR 20-6.010(5)(C).
2. Failed to operate and maintain facilities to comply with the MCWL and applicable permit conditions, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.
3. Failed to upgrade the lagoon as required in part "E," Schedule of Compliance, of MSOP number MO-0086037, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A).
4. Failed to submit complete and timely DMRs as required in part "A" of MSOP number MO-0086037, in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1.
5. Failed to comply with the effluent limits contained in Part "A" of MSOP number MO-0086037, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.
6. Caused pollution of a tributary to Rocky Fork Creek, waters of the state, or placed or caused or permitted to be placed a water contaminant in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.
7. Discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards general criteria established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031.

### **IV. AGREEMENT**

- A. The Department and Burks Properties desire to amicably resolve all claims that might be brought against Burks Properties for the violations alleged above in Section III, Conclusions of Law, without Burks Properties 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 AOC, 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 Burks Properties under this AOC. If Burks Properties sells or otherwise transfers the facility, then Burks Properties shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of Burks Properties under this AOC in writing. In such event, Burks Properties shall provide 30 days prior written notice of such assumption to the Department.

- C. Burks Properties, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of five thousand dollars and zero cents (\$5,000.00). The civil penalty shall be paid in the form of certified check or cashier's check made payable to "*Boone County School Treasurer, as custodian of the Boone County School Fund.*" A check in the amount of five thousand dollars and zero cents (\$5,000.00) is due and payable upon execution of this AOC by Burks Properties. The check and signed copy of the AOC shall be delivered to:

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

- D. Beginning immediately and continuing until the Department terminates the MSOP number MO-0086037, Burks Properties agrees to submit to the Department complete, accurate, and timely DMRs pursuant to the requirements of MSOP number MO-0086037.
- E. Burks Properties agrees to maintain vegetation on and around the lagoon berms at less than six (6) inches, and repair and maintain the berm slopes as damage occurs.
- F. Upon the effective date of this AOC and continuing until Green Hills is connected to BCRSD's new Rocky Fork Wastewater Treatment Facility, Burks Properties agrees not to accept any new mobile homes at Green Hills if the lagoon's effluent is unable to comply with the operational requirements and effluent limitations defined by Paragraph G below.
- G. Beginning immediately and continuing until Green Hills is connected to BCRSD's new Rocky Fork Wastewater Treatment Facility, Burks Properties agrees to operate and maintain the existing lagoon at all times in a manner sufficient to prevent sludge and sanitary products from discharging from the lagoon to waters of the state, and enable the effluent to comply with the Interim Effluent Limitations contained in Part "A" of the 2007 MSOP listed below:

Parameter	Daily Maximum	Weekly Average	Monthly Average	Measurement Frequency	Sample Type
Flow (MGD)	*		*	1x/month	24 hr.
BOD (mg/L)		65	45	1x/month	grab
TSS (mg/L)		120	80	1x/month	grab
pH (SU)	**		**	1x/month	grab
Ammonia (mg/L)	*		*	1x/month	grab
Temperature (C)	*		*	1x/month	grab
FC #/100mL	*		*	1x/month	grab

All units or components of the lagoon, including the aerator, shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment and repair of the lagoon system. To prevent further pollution to waters of the State, Burks Properties agrees to inspect the receiving stream below Outfall 001, at minimum but more if needed, once per day four (4) days a week, and maintain a written log that includes, at minimum, the date, time, and name of the individual who completed the inspections. In the event that sludge or other solids are discharged from the outfall, Burks Properties agrees to report the discharge to the Department within 24 hours of discovery and submit a written report of the incident to the Department within five (5) days of discovery and remove any sludge or solids that have been discharged. The 24-hour reports shall be made using the Department's electronic reporting system (<http://www.dnr.mo.gov/mosso/>) or orally. Voicemail messages, electronic mail, or faxes do not satisfy the 24-hour reporting requirement.

- H. Within six (6) months of the effective date of this AOC, Burks Properties agrees to submit to the Department a lagoon closure plan for review and approval. The closure plan shall comply with Standard Conditions for National Pollutant Discharge Elimination System ("NPDES") Permits, Part III, Section I, Closure Requirements. If the Department comments on the closure plan, within fifteen (15) days of receipt of the Department's comments, Burks Properties agrees to respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the closure plan.
- I. Within 90 days' notice of availability to connect to BCRSD's new Rocky Fork Wastewater Treatment Facility or by December 31, 2015, whichever date comes first, Burks Properties agrees to take all steps necessary to cease discharge from the lagoon by directing wastewater produced at Green Hills to BCRSD's new Rocky Fork Wastewater Treatment Facility unless a delay or default is caused by a force majeure event as described in Paragraph M. Burks Properties shall obtain all required state, county, and local approvals and permits necessary to redirect the flow of wastewater produced at Green Hills to BCRSD's new Rocky Fork Wastewater Treatment Facility.
- J. Within one hundred twenty (120) days of completing connection to BCRSD's new Rocky Fork Wastewater Treatment Facility, Burks Properties agrees to complete closure of the lagoon, and submit to the Department 1) a written report documenting that the lagoon has been closed in accordance with the Department-approved closure

plan; and 2) a completed Form J requesting termination of MSOP number MO-0086037.

- K. Except in the event of a force majeure event as described in Paragraph M, should Burks Properties fail to meet the terms of this AOC, including the terms set out in Paragraphs C through J, Burks Properties shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100.00 per day
31 to 90 days	\$200.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "*Boone County Treasurer, as custodian of the Boone 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

- L. No portion of the stipulated penalties paid pursuant to this AOC may be used to reduce Burks Properties' federal or state tax obligation.
- M. A "force majeure event," for the purposes of this AOC, is defined as any event arising from causes beyond the control of Burks Properties, of any entity controlled by Burks Properties, or Burks Properties' contractors, which delays or prevents the performance of any obligation under this AOC despite Burks Properties' best efforts to fulfill the obligation. The requirement that Burks Properties exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate and prevent any potential force majeure event and best efforts to minimize the effects of any such event as it is occurring and after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force majeure" does not include unanticipated or increased expenses or costs associated with implementation of this AOC, changed financial circumstances, or other financial or budgetary issues. Failure to apply for a required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of this AOC, are not force majeure events.
1. If any event occurs that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Burks Properties shall provide notice orally or by electronic or facsimile transmission to the Department within five (5) days of when Burks Properties first knew that the event might cause a delay. Within seven (7) days thereafter, Burks Properties

shall provide in writing to the Department, an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Burks Properties' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Burks Properties, such event may cause or contribute to an endangerment to public health, welfare or the environment. Burks Properties shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Burks Properties from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Burks Properties shall be deemed to know of any circumstance of which Burks Properties, any entity controlled by Burks Properties, or Burks Properties' contractors knew or should have known.

2. If the Department agrees that a force majeure event has occurred, the Department may agree to extend the time for Burks Properties to perform the obligation(s) under this AOC that are affected by the force majeure event for the time necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, by itself, extend the time for performance of any other obligation. The Department will notify Burks Properties of the obligations affected by the force majeure event. If the Department does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Burks Properties, the Department's position shall be binding.
- N. Nothing in this AOC forgives Burks Properties from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forego pursuing by any legal means any noncompliance with the laws of the State of Missouri except as provided in Paragraph M. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- O. In consideration of Burks Properties' compliance with Paragraphs C through J of this AOC, the Department agrees not to cause to bring an administrative or civil action for any damages, expenses, penalties, fees, and costs against Burks Properties and its predecessors, representatives, and affiliates for the violations of the MCWL and its regulations alleged in this AOC.
- P. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.

Q. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to Burks Properties for its records.

R. Burks Properties is subject to and shall comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

**V. RIGHT OF APPEAL**

By signing this AOC, Burks Properties consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

Burks Properties reserves all appeal rights corresponding with any subsequently issued MSOP(s) as provided by Chapters 536, 621, 640, and 644, RSMo, and any other applicable state law.

**VI. CORRESPONDENCE AND DOCUMENTATION**

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

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

Agreed to and Ordered this 31st day of April, 2014

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

Agreed to and Ordered this 15<sup>th</sup> day of APRIL, 2014



Charles Fred Burks, Managing Member  
Burks Properties, LLC  
dba, Green Hills Mobile Home Park

Copies of the foregoing served by certified mail to:

Mr. Brian T. McCartney  
Brydon, Swearngen & England, PC  
P.O. Box 456  
Jefferson City, MO 65102-0456

CERTIFIED MAIL:

c. Mr. Charles Burks  
Burks Properties, LLC  
1151 E. High Point Lane  
Columbia, MO 65203

Ms. Diane Huffman, Environmental Protection Agency  
Mr. Chris Wieberg, Chief, Operating Permits Section  
Ms. Janet Pointer, Accounting Specialist, Accounting Program  
Ms. Irene Crawford, Director, Northeast Regional Office  
Missouri Clean Water Commission