FILED
Monday, September 08, 2014
COOPER COUNTY CIRCUIT CLERK
NANCY FISHER

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IN THE CIRCUIT COURT OF COOPER COUNTY, MISSOURI

STATE OF MISSOURI ex rel. Attorney General Chris Koster and Missouri Department of Natural Resources,	)	RECEIVED AUG 25 2014 WATER PROTECTION PROGRAM
Plaintiff,	)	
v.	)	Case No. 13CO-CC00042
NELSON LEONARD, and LENCO PROPERTIES, LLC	)	
Defendants.	)	

CONSENT JUDGMENT

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendants Nelson Leonard and Lenco Properties, LLC, by and through counsel, 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. 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 want to terminate this controversy and consent to the entry of this judgment without trial.

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, having consented to the entry of this Consent Judgment, 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 the Missouri Clean Water Law Chapter 644 and the regulations adopted thereunder. In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

b. "Defendants" means Nelson Leonard and Lenco Properties, LLC.

c. "Department" means the Missouri Department of Natural Resources.

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d. "Martinsville Facility" means the wastewater treatment facility and attached buildings at Lenco Properties, LLC, State Highway 135, and Martinsville Road, Boonville, MO 65233, Cooper County, Missouri.

e. "Billingsville Facility" means the wastewater treatment facility and attached buildings at or near 14049 Highway 5, near Billingsville Road in Boonville, Cooper County, Missouri.

f. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to § 644.076.1 RSMo.[1] Venue is proper in this court pursuant to § 644.076.1 RSMo because the Defendants' conduct giving rise to this action took place in Cooper County.

IV. Parties Bound

4. The provisions of this 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

[1] All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

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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.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations, or under other federal or state 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.

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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.

d. The State of Missouri 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' Martinsville Facility or Billingsville Facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

7. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

VI. Injunctive Relief

8. Defendants agree and are ordered to comply with the Missouri Clean Water Law, Chapter 644, and all implementing regulations for any and all future activities in the State of Missouri.

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Martinsville Facility

9. Defendants are ordered to immediately cease all discharges from the Martinsville Facility and pump and haul wastewater, to the extent necessary to prevent wastewater from discharging, from the Martinsville Facility to a permitted wastewater treatment facility with the capacity to treat the wastewater. Additionally, Defendants agree to maintain pumping and hauling receipts, if pumping and hauling is necessary, and submit the receipts from the previous month to the Department by the tenth (10^{th}) day of the following month. The records shall include the date that the wastewater was pumped; number of gallons pumped; the name of the wastewater hauler and the permitted facility accepting the wastewater.

10. Within ninety (90) days of the Court's entry of this Consent Judgment, Defendants shall complete closure of the Martinsville Facility in accordance with the closure plan approved under construction permit number CP0001027, including permanently disabling the existing sewer connections, and submit a written report to the Department documenting that the facility has been closed in accordance with the Department-approved closure plan and all existing sewer connections have been permanently disabled.

Billingsville Facility

11. Defendants shall collect a wastewater influent sample at least once per year when the facility is discharging, and conduct five-day

Biochemical Oxygen Demand and Total Suspended Solids analyses in order to ensure that the facility has a removal efficiency of at least 85 %, and submit the report to the Department by October 28 of each year, as required by "Part C, Influent Monitoring Requirements" of Missouri State Operating Permit number MO-0126420.

12. Beginning immediately upon the Court's entry of this Consent Judgment, Defendants shall perform effluent testing by approved methods according to the most current edition of "Standard Methods for the Examination of Water and Wastewater" or other methods approved by the Department as required by § 644.076.1 RSMo and 10 CSR 20-9.010(6). Defendants also agree to conduct composite sampling for applicable parameters as required by "Part A" and "Part C" of Missouri State Operating Permit number MO-0126420.

13. Within fifteen (15) days of the Court's entry of this Consent Judgment, Defendants agree to submit to the Department a completed Form B, Application for Construction or Operating Permit for Facilities which Receive Basically Domestic Waste, including any applicable annual operating permit fees, requesting renewal of Missouri State Operating Permit number MO-0126420.

14. Within fifteen (15) days of the Court's entry of this Consent Judgment, Defendants shall submit missing annual Form S, Domestic Sludge

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Reporting, for 2008 through the 2013. In the event that the annual sludge reports are unavailable, Defendants shall submit a letter to the Department explaining the reason for the missing reports, including any applicable hauling receipts for sludge removed during 2008 through 2013, and what actions the Defendants have taken or plan to take to prevent a reoccurrence of the violation in the future. Defendants shall also submit future annual sludge reports by January 28 every calendar year as required by Standard Conditions, Part III of Missouri State Operating Permit number MO-0126420.

15. Defendants shall operate and maintain the existing Billingsville Facility at all times in compliance with the conditions and requirements of Missouri State Operating Permit number MO-0126420, including removing sludge from the sampling basin so as to prevent a discharge of sludge from the Facility. Within fifteen (15) days of the Court's entry of this Consent Judgment, Defendants shall submit a written report to the Department documenting proper removal of sludge from the sampling basin.

16. Defendants shall immediately cease all discharges from the outfall of the Billingsville Facility and pump and haul wastewater from the Billingsville Facility to a permitted wastewater treatment facility with the capacity to treat the wastewater. Defendants agree to continue pumping and hauling wastewater as necessary, but no less than monthly, to prevent any

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overflows or discharges from the Facility outfall of sewage to waters of the state, in the interim, until the Defendants complete upgrades to the Facility that enable the effluent to comply with permitted effluent limitations contained in Missouri State Operating Permit number MO-0126420. Additionally, Defendants shall maintain pumping and hauling receipts and submit the receipts from the previous month to the Department by the tenth (10^{th}) day of the following month. The records must include the date that the wastewater was pumped; number of gallons pumped; the name of the wastewater hauler and the permitted facility accepting the wastewater.

17. Defendants shall complete upgrades or replacement of the Billingsville Facility that will enable the effluent to comply with the Missouri Clean Water Law and its implementing regulations and all conditions and requirements of Missouri State Operating Permit number MO-0126420. 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. Within forty-five (45) days of the Court's entry of this Consent Judgment, Defendants agree to 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 in accordance with Missouri Clean Water

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Regulation 10 CSR 20-8.020. The engineering report shall include a comprehensive evaluation of the current condition of the facility, and provide wastewater treatment options and recommendations that will enable the effluent to comply with the conditions, requirements and effluent limitations contained in Missouri State Operating Permit number MO-0126420. Although not required by expired Missouri State Operating Permit number MO-0126420, the engineering report may also include alternatives that will enable compliance with final effluent limitations for Ammonia as Nitrogen, which will be required when Missouri State Operating Permit number MO-0126420 is renewed. The report may provide recommendations for conversion of the Facility to a permitted no-discharge land application system, or reducing the number of sewage connections and installing a Department of Health and Senior Services (DHSS)-approved on-site wastewater treatment and disposal system. If the engineering report recommends closure of the existing Facility, it must include a closure plan developed in accordance with permit Standard Conditions, Part III, Section I, Closure Requirements;

B. Within fifteen (15) days receipt of Department comments on the engineering report, Defendants agree to respond to and

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

C. Within sixty (60) days of the date the Department approves the engineering report, Defendants agree to submit to the Department for review and approval, a complete application for a construction permit including the applicable fee, design summary, plans, and specifications signed and sealed by a professional engineer licensed to practice in the State of Missouri for upgrades to the facility that will enable the effluent to comply with effluent limitations contained in Missouri State Operating Permit number MO-0126420, if applicable;

D. Within fifteen (15) days receipt of Department comments on the construction permit application, Defendants agree to respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the construction permit application;

E. By March 1, 2015, or within one hundred eighty (180) days of issuance of a Department or DHSS-issued construction permit, Defendants must complete construction of the approved upgrades;

F. Within thirty (30) days of completing construction, Defendants agree to submit to the Department either:

1. a Statement of Work Completed, signed, sealed and dated by a professional engineer registered in the State of

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Missouri certifying that the project is complete and operable in accordance with the Department-issued construction permit, and a completed Form B, *Application for an Operating Permit for Domestic or Municipal Wastewater (≤100,000 gallons per day)*, with applicable fee to modify Missouri State Operating Permit number MO-0126420 to incorporate changes to the existing discharging Facility, OR

2. a Statement of Work Completed, 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 the Department-issued construction permit, and a completed Form J, *Request for Termination of a State Operating Permit*, to terminate Missouri State Operating Permit number MO-0126420 and Form E, *Application of General Permit*, with applicable fee if the upgraded facility qualifies for coverage under a general operating permit, OR

3. a copy of the final construction inspection or the installer's certification that the system was installed according to the DHSS-approved application and construction permit; **AND**

G. Within thirty (30) days of completing construction of the improvements, Defendants shall achieve compliance with the effluent

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limitations contained in Missouri State Operating Permit number MO-0126420. Completion of the requirements under Paragraph 17.F.2 or 17.F.3, approved by the Department, will satisfy this paragraph.

H. If Defendants install a DHSS-approved onsite system and close the existing Facility, Defendants must close the existing Facility within ninety (90) days of completing construction of the DHSS-approved onsite system.

I. If Defendants install a DHSS-approved onsite system, upon proper closure of the existing Facility, Defendants must submit to the Department a completed Form J, *Request for Termination of a State Operating Permit*, to terminate Missouri State Operating Permit number MO-0126420.

VII. Penalties

18. Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty of $45,500. Payment in full of the above listed penalty, along with the entry of this judgment, resolves Defendants' liability for:

A. The Civil Penalties due under Counts II through VII of the Petition;

B. The Suspended Penalty due under Count I of the Petition as triggered by Defendants' breach of ¶¶ 2 and 4 of the June 9, 2010

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Settlement Agreement ("Agreement") between Nelson Leonard and the State of Missouri, which is attached hereto as Appendix A, and incorporated by reference herein;

C. The Stipulated Penalties due under Count I of the Petition, authorized by ¶ 13 of the 2010 Agreement and triggered by Defendants' breach of ¶ 4 and 10 of the Agreement; and

19. Defendants hereby authorize entry of this judgment against them and in favor of the State of Missouri for this sum.

20. Suspended Civil Penalty. $25,500 of the total penalty of $45,500 shall be suspended upon the condition that Defendants comply with the Missouri Clean Water Law and its implementing regulations for a period of 2 years from the entry of this Consent Judgment. Once a violation of the Missouri Clean Water Law is documented by the Missouri Department of Natural Resources, the Missouri Attorney General's Office shall send a written demand for the suspended penalty to Defendants. Defendants shall have fifteen (15) days from receipt of the written demand to submit a check made payable to the "*State of Missouri (Cooper County)*" to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899 for the entire suspended penalty amount. The suspended penalty provided in this Consent Judgment shall be in addition to any other

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rights, remedies, or sanction available to State for Defendants' violation of this Consent Judgment or applicable law.

21. Unsuspended Penalty Payment. Within thirty (30) days of entry of this Consent Judgment, Defendants agree to pay the $20,000 unsuspended portion of the civil penalty by submitting a check made payable to the "*State of Missouri (Cooper County)*" to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

VIII. Stipulated Penalties

22. 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:

Days of Violation	Amount of Penalty
1 to 30 days	$100 per day
31 to 90 days	$250 per day
91 days and above	$500 per day

23. Stipulated penalties shall be due and payable within ten (10) days of demand being made by the Attorney General's Office. Defendant shall pay stipulated penalties by check made payable to the "*State of Missouri (Cooper 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. The

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check will be deposited and processed in accordance with the Consent Judgment and Missouri law.

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

IX. Modification

25. 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.

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The parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.

NELSON LEONARD

Date: 8/12/14

LENCO PROPERTIES, LLC

By: Member Date: 8/12/14
Nelson Leonard, Owner and Managing Member

MISSOURI ATTORNEY GENERAL'S OFFICE

By: Date: 8.21.14
Jacob T. Westen
Assistant Attorney General

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: for Date: 8/28/14
Leanne Tippett Mosby, Director
Division of Environmental Quality

SO ORDERED.

9/8/2014

Circuit Judge

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