

IN THE CIRCUIT COURT OF JEFFERSON, MISSOURI

FILED

FEB 21 2014

DIVISION TWO

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

Plaintiff, )

v. )

Case No. 13JE-CC00769

TRAVIS NOACK, )

Defendant. )

**ENTRY OF DEFAULT 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 Plaintiff's *Verified Petition for Injunctive Relief and Civil Penalties* in the above-styled action was filed with this Court on September 4, 2013.
2. Defendant was subsequently served with a summons and copy of the Petition on September 11, 2013.
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 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.

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. Section 644.076.1 RSMo<sup>1</sup> 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.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

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

11. 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 Plaintiff, State of Missouri's Petition.

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<sup>1</sup> All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

12. 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.

13. Defendant is permanently ordered and enjoined to obey, abide by and comply with this Order, and the Missouri Clean Water Law, Chapter 644.010 *et seq.*, RSMo, and the rules and regulations promulgated thereunder, for the parcel of real property (“the Site”) located at NW ¼, Section 15, Township 40 North, Range 4 East, Jefferson County, as alleged in Plaintiff’s *Verified Petition for Injunctive Relief and Civil Penalties*.

14. Defendant is permanently ordered and enjoined to immediately bring the Site into compliance with the Missouri Clean Water Law and comply with the Missouri Clean Water Law in all future operations, by specifically:

- a. Within 30 days of entry of this Default Judgment, Defendant shall implement, and thereafter maintain, all necessary best management practices to stabilize any disturbed land at the Site to prevent sediment from eroding offsite or into waters of the state.

b. If Defendant chooses to convert the disturbed site to agricultural use, Defendant shall properly plant, cultivate, and establish a winter cover crop over 100% of the disturbed area, using all necessary best practices to prevent soil erosion, within 60 days of entry of this Default Judgment. Furthermore, Defendant shall continue to maintain agricultural use by establishing season-appropriate crops for at least one year from the entry of this Default Judgment.

c. If Defendant ceases active agricultural use or chooses not to pursue agricultural uses of the disturbed area, then Defendant shall, within 60 days of entry of this Consent Judgment or immediately upon cessation of agricultural use, regrade the Site as necessary to remove erosion gullies and stabilize any disturbed and/or bare lots at the Site using all necessary best management practices to prevent sediment from leaving the site. Also within the 60 day period, Defendant shall further plant, cultivate, and establish perennial vegetation for stabilization and such perennial vegetation must compose at least seventy percent (70%) of fully established plant density over one hundred percent (100%) of the disturbed area. Defendant shall use hydraulic mulch seeding to seed any disturbed areas.

d. If at any future time Defendant intends to implement any non-agricultural change in use involving land disturbance, Defendant shall first submit an application for a Missouri State Operating Permit for Land Disturbance (“Permit Application”) to the Department for review and approval. Within 15 days of receiving Department comments on the Permit Application, Defendant shall respond to and address, to the Department’s satisfaction, all of the Department’s comments on the Permit Application.

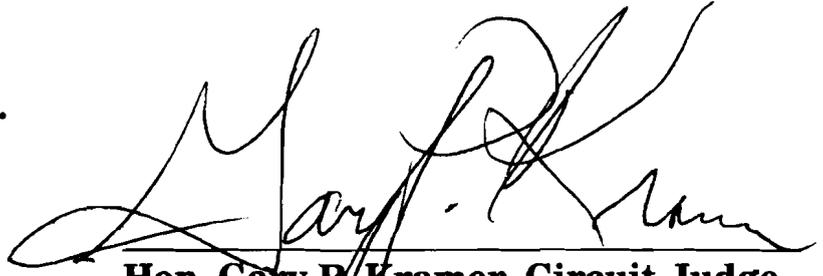
15. Defendant is hereby ordered to immediately forward civil penalties in the amount of \$10,000.00 in the form of a certified check, made payable to the “*State of Missouri (Jefferson)*,” to Collections Specialist, P.O. Box 899, Jefferson City, MO 65102-0899.

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

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

18. Award Plaintiff its costs expended herein and for such other relief as may be just and proper under the circumstances.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "Gary P. Kramer", written over a horizontal line.

**Hon. Gary P. Kramer, Circuit Judge**

Dated this 21 day of FEB, 2014