

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
 Attorney General Chris Koster and)
 Missouri Department of)
 Natural Resources,)
)
 Plaintiff,)
)
 v.)
)
 RLB PROPERTIES, LLC and)
)
 MICHAEL PIERCE,)
)
 d/b/a Whispering Lanes Mobile)
 Home Park,)
)
 Defendants.)

**FILED 11/10/2014
 GREENE COUNTY CIRCUIT COURT
 DIVISION 1**

Case No. 1331-CC01162

FINAL JUDGMENT

On November 10, 2014, the above matter came before this Court for trial. Plaintiff appeared by counsel Timothy A. Blackwell. Defendants appeared not.

The Court, having considered the evidence adduced at trial, together with the pleadings herein, enters these findings of fact, conclusions of law, judgment and order.

Findings of Fact

1. Defendant RLB Properties, LLC owns the property formerly operated as Whispering Lanes Mobile Home Park, located at 5505 West

Sunshine, Springfield, MO 65619. Defendant RLB Properties, LLC has owned the site since 2002.

2. Defendant Michael Pierce is a member of the LLC and has been responsible for operation of the mobile home park.

3. The wastewater treatment facility (WWTF) at the site consists of two lagoon cells and an extended aeration plant.

4. Defendants closed the mobile home park on May 31, 2012.

Defendants have never submitted a closure plan for approval by the Department, and have failed to close the WWTF in accordance with a closure plan approved by the Department.

5. Defendants have never obtained an operating permit from the Missouri Department of Natural Resources for the WWTF at the site.

6. The lagoon cells have been shown to be leaking, and dye studies performed by the Department have revealed that wastewater from the system was entering groundwater supplies through sinkholes located on the property. The lagoon is built on a sinkhole.

7. An inspection in 2005 revealed that a large quantity of poorly treated wastewater was coming from the wastewater treatment plant and entering the eye of a sinkhole on the property. A water quality analysis of samples of the wastewater being discharged into the sinkhole showed that effluent limits for bacteria were exceeded.

8. A dye trace from the lagoon showed up in a nearby drinking water well and the drinking water tested positive for coliform bacteria.

9. The original lagoon cell experienced a partial collapse at one point, and the most recent geological survey gave the lagoon a “severe” rating for collapse potential.

Conclusions of Law

1. This Court has jurisdiction over the subject matter herein and of the parties pursuant to section 644.076.1, RSMo.

10. The WWTF is a “water contaminant source” as that term is defined by § 644.016(25), RSMo.

11. Untreated, undertreated, and treated discharges of wastewater from the lagoon are “water contaminants,” as that term is defined in § 644.016(24), RSMo.

12. Subsurface groundwater is part of the “water[s] of the state” as defined in § 644.016(23), RSMo.

Count I – Failure to Close WWTF

13. Missouri Clean Water Regulation 10 CSR 20-6.010(12)(A) requires persons who cease operation of waste, wastewater, and sludge handling and treatment facilities to close the facilities in accordance with a closure plan approved by the Department.

14. Section 644.076.1, RSMo Supp. 2013, provides:

It is unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant or point source located in Missouri in violation of sections 644.006 to 644.141, or any standard, rule or regulation promulgated by the commission. In the event the commission or the director determines that any provision of sections 644.006 to 644.141 or standard, rules, limitations or regulations promulgated pursuant thereto, or permits issued by, or any final abatement order, other order, or determination made by the commission or the director, or any filing requirement pursuant to sections 644.006 to 644.141 or any other provision which this state is required to enforce pursuant to any federal water pollution control act, is being, was, or is in imminent danger of being violated, the commission or director may cause to have instituted a civil action in any court of competent jurisdiction for the injunctive relief to prevent any such violation or further violation or for the assessment of a penalty not to exceed ten thousand dollars per day for each day, or part thereof, the violation occurred and continues to occur, or both, as the court deems proper.

15. Since 2012, when Defendants abandoned the WWTF, Defendants have failed to submit a closure plan for the WWTF to the Department and failed to close the WWTF, including the lagoon.

16. Defendants violated 10 CSR 20-6.010(12)(A) by failing to submit a closure plan for the WWTF to the Department for review and approval.

17. Defendants violated 10 CSR 20-6.010(12)(A) by failing to properly close the WWTF in accordance with an approvable closure plan.

Count II—Operating or Maintaining the WWTF Without a Permit

18. Section 644.051.2, RSMo, provides that it shall be unlawful for any person to operate, use or maintain any water contaminant or point

source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of sections 644.066 to 644.141, RSMo, unless such person holds an operating permit from the Clean Water Commission.

19. The Court hereby finds and concludes that Defendants have been in continuing violation of § 644.051.2, RSMo Supp. 2013, since at least 2002, and continuing to the present, by operating and/or maintaining the WWTF without a permit.

**COUNTS III and IV – Causing Pollution to Waters of the State and
Introducing Water Contaminants into the Subsurface Waters of the
State through a Sinkhole**

20. Section 644.051.1(1), RSMo, makes it “unlawful for any person to cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state.”

21. The Missouri Cave Resources Act, § 578.215.1, RSMo, prohibits any person from purposely introducing into any cave, cave system, sinkhole, or subsurface waters of the state any substance that will or could violate any provision of the Missouri Clean Water Law.

22. In 2005, a water quality analysis of samples of the wastewater being discharged into the sinkhole showed that effluent limits for bacteria were exceeded.

23. Defendants violated § 644.051.1(1), RSMo, by causing and permitting the discharge of water contaminants from the WWTF in a location where those water contaminants were reasonably certain to cause pollution to the waters of the state, and Defendants violated § 578.215.1, RSMo, by introducing water contaminants into the subsurface waters of the state through a sinkhole.

24. Pursuant to § 644.076.1, RSMo, Defendants are subject to the imposition of injunctive relief and a civil penalty not to exceed \$10,000 per day for each day, or part thereof, that each violation of the Missouri Clean Water Law occurred.

Judgment

The Court hereby enters judgment in favor of Plaintiff and against Defendants, jointly and severally.

The provisions of this Judgment and order shall be binding upon Defendants, as well as their agents, servants, employees, heirs, successors, assigns, and upon all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of Defendants or his agents, servants, employees, heirs, successors, and assigns.

Order

A. Injunctive Relief

1. Defendants are hereby ordered and enjoined to comply with the Missouri Clean Water Law and all implementing regulations for any and all future activities in the State of Missouri.

2. Defendants are hereby ordered and enjoined to stop all discharges, including discharges or potential discharges to groundwater.

3. Defendants are hereby ordered and enjoined from operating or maintaining the WWTF without a permit.

4. Defendants are hereby ordered and enjoined to submit a closure plan to DNR within 30 days of entry of this judgment and to complete closure of the WWTF within 180 days of DNR's approval of the closure plan.

B. Civil Penalty

The Court may assess a penalty of up to \$10,000 per violation for each day, or part thereof, that the violation continued or continues without abatement. Section 644.076.1, RSMo Supp. 2013. In considering the penalty amount, the Court has considered Defendants' bad faith and the economic benefit of non-compliance. The Court hereby assesses against Defendants a civil penalty of \$41,820.00. Within thirty days after entry of the Judgment, Defendants shall pay the civil penalty by check made payable to the "*State of Missouri (Green County)*." Defendants shall mail the check to Collections

Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City,
MO 65102-0899 for deposit or credit to the proper account.

Modification

15. Except as otherwise specified herein, this Judgment may be
modified or amended only with the approval of the Court.

Costs

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

SO ORDERED.



Judge, Greene County

Date: 11/10/2014