

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 T.G. Boyd, III)
 Kaysinger Mobile Home Court)
 P.O. Box 1162)
 Warsaw, MO 65355)
)
 Proceeding under the)
 Missouri Clean Water Law)

Order No. 2015-WPCB-1330

NOTICE AND ORDER TO ABATE VIOLATIONS

SERVE BY CERTIFIED MAIL # 7009 0080 0000 1910 2401
RETURN RECEIPT REQUESTED

TO: Mr. T.G. Boyd, III
P.O. Box 1162
Warsaw, MO 65355

You are hereby notified that on this date the Department of Natural Resources (department) has issued this Notice and Order to Abate Violations (order) to Mr. T.G. Boyd, III (respondent) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically sections 644.056 and 644.079 RSMo.

Failure to comply with this order is, by itself, a violation of the MCWL under section 644.076 RSMo. Continued non-compliance may result in the department pursuing legal action for injunctive relief, additional penalties of up to \$10,000.00 per day for each day or part thereof of non-compliance, 10% interest on any amounts owed, attorney fees and costs, and/or any other remedy authorized by law, including but not limited to sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

FINDINGS OF FACT

1. The respondent owns a tract of land located in the NE ¼, SE ¼, Section 35, Township 40 North, Range 22 West, Benton County, Missouri. The respondent operates a single cell wastewater treatment facility lagoon (WWTF) to treat wastewater from Kaysinger Mobile Home Court. The mobile home court is located at Old Highway 65 South, Warsaw, Missouri and consists of 14 total units. The adjusted design flow is 4,200 gallons per day and the actual flow is 3,700 gallons per day with a design population equivalent of 75. Design sludge production is 1 dry ton per year and land application is utilized for sludge removal. The WWTF currently operates pursuant to the terms and conditions of Missouri State Operating Permit (MSOP) No. MO-0111040.

2. MSOP No. MO-0111040 was issued October 31, 2008, and expired October 30, 2013. The department received a MSOP renewal application on April 1, 2013. The MSOP authorizes the discharge of treated effluent at the site in accordance with the effluent limitations and monitoring requirements set forth in the MSOP. Treated effluent discharges to a tributary of South Fork, which flows into South Fork and then to the Lake of the Ozarks.

3. The Lake of the Ozarks, South Fork and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.

4. MSOP No. MO-0111040 requires respondent to sample the effluent discharged from Outfall No. 001 and chemically analyze the effluent sample for the water contaminant listed in Part "A" every quarter. MSOP No. MO-0111040 further requires the effluent to comply with the effluent limitations contained in Part "A" and requires the results of the analysis to be submitted to the department on quarterly Discharge Monitoring Reports (DMRs).

5. On October 20, 2009, department staff conducted a compliance inspection of the site and observed that there were no warning signs on the perimeter fence, trees and tall vegetation were growing in and around the lagoon, and there was evidence of sludge in the drainage ditch leading to a tributary to South Fork.

6. On October 30, 2009, the department issued Notice of Violation (NOV) No. KCRO20090102110293774 to the respondent for violations observed during the October 20, 2009, compliance inspection.

7. On May 18, 2010, the department received an engineering report from Bowden Campbell, P.E., Lake Professional Engineering Services, that recommended the respondent abandon the current collection system and close the WWTF. The engineering report suggested that the respondent install a subsurface soil absorption system, regulated by the Benton County Health Department. On September 17, 2010, the department sent correspondence to the respondent approving the engineering report.

8. On March 4, 2011, Lake Professional Engineering Services submitted a closure plan for the WWTF and on May 11, 2011, the department approved the closure plan for the WWTF.

9. On May 14, 2013 and September 4, 2014, department staff conducted compliance inspections of the site, and observed many trees and dense vegetation surrounding the lagoon, making access difficult. Staff could not find a gate, the perimeter fence was inadequate, there was no access road to the WWTF, and the outfall was not marked.

10. On October 31, 2013, the department issued the respondent NOV No. KC2013060416082688 for violations observed during the May 14, 2013, compliance inspection.

The transmittal letter required the respondent to coordinate with the Water Protection Control Branch, Compliance and Enforcement Section, and the Missouri Attorney General's Office, to close the lagoon and install an onsite wastewater treatment system approved by the Health Department, or connect the wastewater flow from the mobile home court to a regional wastewater treatment system. The department did not receive a response.

11. On October 15, 2014, the department issued NOV No. KC2014092311145146 to the respondent for violations observed during the September 4, 2014, compliance inspection. The transmittal letter required the respondent to repair and properly maintain the WWTF and submit a written statement to the department by November 13, 2014, explaining what actions were taken to correct the violations. The department did not receive a response from the respondent.

12. As of the date of this order, the WWTF has not been properly repaired, maintained, or closed.

13. As described above, department staff has observed on three separate occasions that the respondent failed to properly operate and maintain the WWTF or close the WWTF.

14. This order is necessary to compel compliance and/or to prevent or eliminate threats to human health or the environment.

STATEMENT OF VIOLATIONS

The respondent has violated the MCWL and its implementing regulations as follows:

15. Since at least October 20, 2009, the respondent failed to operate and maintain the WWTF to comply with the MCWL and applicable permit conditions and regulations in violation of Regulation 10 CSR 20-6.010(8)(a)4.

16. Since at least May 14, 2013, the respondent failed to provide an all-weather access road from a public right-of-way to the WWTF in violation of Regulation 10 CSR 20-8.020(11)(A)2.

17. Since at least May 14, 2013, the respondent failed to construct a perimeter fence to sufficiently restrict entry by children, livestock and unauthorized persons to the WWTF as well as to protect the WWTF from vandalism in violation of Regulation 10 CSR 20-8.020(11)(C)11A.

18. Since at least May 14, 2013, the respondent failed to provide a lockable gate for access of maintenance equipment and vehicles in violation of Regulation 10 CSR 20-8.020(11)(C)11F.

19. Since at least May 14, 2013, the respondent failed to place warning signs on all sides of the perimeter fence in violation of Regulation 10 CSR 20-8.020(11)(C)11G.

20. Since at least May 14, 2013, the respondent failed to seed and establish a good vegetative cover on dikes, diversion ditches and terraces to minimize erosion and aid in weed control in violation of Regulation 10 CSR 20-8.020(13)(A)3G.

CORRECTIVE ACTIONS

Pursuant to section 644.056 RSMo, the department hereby orders the respondent to complete each of the following corrective actions:

21. Immediately upon the effective date of this order, the respondent is ordered to cease all discharge from the WWTF and pump and haul wastewater from the WWTF to a permitted WWTF with the capacity to treat the wastewater. The respondent is ordered to continue pumping and hauling wastewater, as necessary, to prevent any overflows or discharges

of sewage to waters of the state until the effluent is no longer discharging and the WWTF is able to comply with the MCWL. Additionally, the respondent is ordered to maintain pumping and hauling receipts and make these receipts available to the department upon request. The records shall include the date the wastewater was pumped; number of gallons pumped; and the name of the wastewater hauler and the permitted WWTF accepting the wastewater.

22. Within 15 days of receipt of this order, the respondent is ordered to submit correspondence to the department indicating which of the following options the respondent has chosen to achieve compliance with the MCWL:

a. If the respondent chooses OPTION A:

i. Within 120 days, the respondent is ordered to meet all the minimum requirements of the Benton County Health Department (Health Department) for converting the WWTF to a subsurface soil absorption system. These requirements include, but shall not be limited to, submitting an application for a construction permit to the Health Department and completing construction of the subsurface soil absorption system in accordance with the construction permit issued by the Health Department. The effluent from the subsurface soil absorption wastewater treatment system shall be contained on the property and handled in such a manner that there is no violation of the MCWL and Regulations.

ii. Within 90 days of the date of installation of the subsurface soil absorption wastewater treatment system, the respondent is ordered to complete closure of the lagoon cell according to the department-approved closure plan, and submit

a written report to the department documenting that the WWTF has been closed in accordance with the department-approved closure plan; and

iii. Within 15 days of completing all closure activities, the respondent is ordered to submit a completed Form J – Request for Termination of a MSOP to the department.

b. If the respondent chooses OPTION B:

i. The respondent is ordered to complete upgrades to the WWTF to comply with the MCWL. Within 30 days of the effective date of this order, the respondent is ordered to retain a professional engineer licensed to practice in the state of Missouri and submit a copy of the contract and letter from the engineer to the department stating that the engineer has been retained to develop an engineering report, plans, designs and specifications that relate to improvements to the WWTF;

ii. Within 30 days of the effective date of this order, the respondent is ordered to clearly mark Outfall No. 001; enclose the pond area with an adequate fence and install a gate for access to the lagoon; display appropriate signage on sides of the fence that reads “SEWAGE TREATMENT FACILITY – KEEP OUT”; remove all trees and shrubs growing on the lagoon berm to a distance of at least 50 feet from the inner shore of the lagoon; repair muskrat burrows and widen berms to a minimum of four feet around the perimeter of the WWTF to allow for maintenance;

iii. Within 60 days of the effective date of this order, the respondent is ordered 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 evaluating the existing wastewater collection and treatment systems, the hydraulic flow, the organic loading, sludge control, and the ability to comply with the applicable effluent limitations, including Ammonia as Nitrogen. The engineering report shall identify all deficiencies with the wastewater collection and treatment systems and recommend corrective actions approved by the department. Although not required at this time, the engineering report may also include alternatives that will result in compliance with final effluent limitations for Ammonia as Nitrogen based on the U.S. Environmental Protection Agency's April 2013 Aquatic Life Ambient Water Quality Criteria for Ammonia -Freshwater. The engineering report shall identify alternatives to upgrade, replace, or eliminate the facility that will result in compliance with all effluent limitations contained in MSOP No. MO-O111040. If applicable, the respondent is ordered to also submit a complete antidegradation submittal pursuant to the Missouri Antidegradation Rule and Implementation Procedure; and use these evaluations to recommend one of the alternatives that will result in compliance with the MCWL and its implementing regulations. The engineering report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8;

- iv. Within 15 days receipt of department comments on the engineering report, the respondent is ordered to respond in writing to the department addressing all department comments on the engineering report;
- v. If the department approved alternative is to upgrade or replace the WWTF, the respondent is ordered to submit to the department for review and approval, a complete application for a construction permit, plans, and specifications sealed by a professional engineer licensed to practice in the state of Missouri and the applicable MSOP fee for the improvements recommended in the department approved engineering report. The plans and specifications shall be developed in accordance with 10 CSR 20-8. The respondent is ordered to submit the application for a construction permit and applicable supporting documents to the department within 45 days of the date the department approves the engineering report;
- vi. Within 180 days of the date the department issues a construction permit for WWTF upgrades, the respondent is ordered to complete construction pursuant to the department approved plans and specifications and achieve compliance with all applicable permitted effluent limitations; and
- vii. Within 15 days of completing construction, the respondent is ordered to submit to the department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer registered in the state of Missouri certifying that the project was completed in accordance with department

approved plans and specifications and if applicable, a complete application for the modified MSOP, including applicable fee.

SUBMISSIONS

23. All other documentation submitted to the department for compliance with this order shall be submitted within the timeframes specified to:

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

OTHER PROVISIONS

24. Any request for an extension of time or to otherwise modify this order may be considered on a case-by-case basis, if the respondent makes a written request to the department within 10 business days of this order, and otherwise provides appropriate justification and/or documentation to the department in a timely manner. Any modification of this order shall be in writing.

25. Compliance with this order resolves only the specific violations described herein, and this order shall not be construed as a waiver or modification or any other requirements of the MCWL and regulations, or any other source of law. Nor does this order resolve any future violations of this order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

26. This order shall apply to and be binding upon the respondent and any of its agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants,

corporations and any persons acting under, through, or for the respondent. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not relieve the respondent of its obligation to comply with this order.

27. For any plan or submittal from the respondent that is required by this order and subject to department approval under this order, the department may approve, disapprove, require revisions, or otherwise modify any such plan or submittal. Any such department decision shall be conveyed in writing to the respondent. Disapproval may result in further orders or pursuit of other forms of relief by the department. If the department requires revisions, the respondent shall submit a revised version of the plan or submittal within ten business days after receiving notice of the department's required revisions, or within such other timeframe as the department may specify. If the department approves or modifies in writing such plan or submittal, it shall become enforceable under this order, and the respondent shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

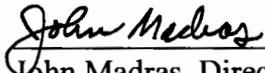
28. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
Truman State Office Building, Room 640
301 W. High Street
P.O. Box 1557
Jefferson City, Missouri 65102
phone: 573-751-2422
fax: 573-751-5018
website: www.oa.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this ~~14~~ day of April, 2015 by:

DEPARTMENT OF NATURAL RESOURCES



John Madras, Director
Water Protection Program

- c: Ms. Diane Huffman, Environmental Protection Agency
Ms. Andrea Collier, Kansas City Regional Office
Mr. Jack McManus, Missouri Attorney General's Office
Missouri Clean Water Commission