

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
)  
Curtis Bourgeois )  
Les Bourgeois Winery )  
P.O. Box 118 )  
Rocheport, MO 65279 )  
)  
**Serve:** )  
Curtis Bourgeois )  
)

**Order No. 2015-WPCB-1380**

RECEIVED  
DEC 04 2015  
Water Protection Program

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**ABATEMENT ORDER ON CONSENT**

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**NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT**

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1380, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Curtis Bourgeois (Respondent) violated the Missouri Clean Water Law (MCWL). 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 Section 644.076.1, RSMo. Litigation may occur without further administrative 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 for 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 the Respondents of liability for, or preclude the department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

## FINDINGS OF FACT

1. The Respondent owns and operates Les Bourgeois Winery located at 12847 West Highway BB, in Rocheport, Missouri. The winery consists of a wine making process, a brewery and a public wine tasting area all served by septic tanks followed by a three-cell lagoon located north of the winery building. The winery's wastewater treatment facility (WWTF) is located in the SE ¼, SE ¼, NW ¼ of Section 7, Township 48 North, Range 14 West, in Boone County. The WWTF discharges treated effluent to a tributary to Bell Branch pursuant to the requirements and conditions of Missouri State Operating Permit (MSOP) No. MO-0130923. Bell Branch, located approximately 1.2 miles downstream of the discharge, and its tributary are Class C streams and have beneficial uses of livestock and wildlife watering, protection of warm water aquatic life and human health-fish consumption, Category "B" whole body contact recreation.
2. MSOP No. MO-0130923 was issued December 23, 2010, and is set to expire on December 22, 2015. The MSOP authorizes the discharge of wastewater from the WWTF in accordance with the effluent limitations and monitoring requirements set forth in the MSOP and did not include a Schedule of Compliance (SOC).
3. MSOP No. MO-0130923 requires the Respondent to sample the effluent discharged from Outfall No. 001 and chemically analyze the effluent sample for the water contaminants listed in Part "A" every month. MSOP No. MO-0130923 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 monthly Discharge Monitoring Reports (DMRs) by the 28<sup>th</sup> day of the month following the reporting period.

4. Monthly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with the applicable permitted effluent limitations for Biochemical Oxygen Demand (BOD) during November and December 2013; January, March, April and December 2014; and June 2015.
5. Monthly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with the applicable permitted effluent limitations for Total Suspended Solids (TSS) during November and December 2013; January, March, April, May, June and December 2014; and June 2015.
6. Monthly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with the applicable permitted effluent limitations for Total Residual Chlorine (TRC) during June 2015.
7. Bell Branch and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.
8. On December 26, 2013, the department issued Notice of Violation (NOV) No. NER2013120212204440 to the Respondent for failure to meet effluent limits for TSS and failure to submit flow data. On January 16, 2014, the department received a response to the NOV from the Respondent stating that the exceedance was believed to be caused by the duckweed being treated which resulted in a die back that occurred in September and October 2013. The Respondent also stated the flow was not reported in August 2013 due to mud covering the effluent weir causing the sampler to be unable to get an accurate reading. The Respondent further explained the mud was removed from the weir after being notified of the obstruction.

9. On May 7, 2014, the department issued NOV No. NER 2014032113284848 to the Respondent for failure to meet effluent limits for TSS and BOD and failure to submit complete DMRs. On May 28, 2014, the department received a response to the NOV from the Respondent stating the exceedances were believed to be caused by stormwater entering the chlorine retention tank during and after heavy rain. In an attempt to stop the stormwater from entering the retention tank, a berm was built around the retention tank. The missing DMRs for October and November 2013 were also included with the response to the NOV.
10. On September 17, 2014, the department conducted a routine compliance inspection of the winery WWTF. Prior to the inspection, department staff reviewed the files for the WWTF. During the inspection, department staff was accompanied by Mr. Jeff Lynch, Engineer. While observing the lagoons, department staff documented an algae bloom occurring in the second and third lagoon cells. Most of the algae was observed to be concentrated in the third cell with a small amount around the edge of the second cell. Department staff also observed installed disinfection equipment for the WWTF; however, Mr. Lynch informed staff that the WWTF does not chlorinate at this time due to disinfection not being required by the MSOP. Sand and debris was documented when department staff observed the WWTF's concrete weir box north of the disinfection equipment. Mr. Lynch informed staff that during heavy rain events, the water level in the creek rises and flows into the outfall structure. Department staff advised Mr. Lynch to clear the debris from the weir structure to allow samples to be collected. Once the debris was cleared, the lagoon was observed to be discharging at the time of inspection and samples were collected by department staff. Staff observed that there was a small

amount of algae in the receiving stream that had been discharged from the lagoon.

Laboratory analysis received from the samples collected during the inspection showed the effluent limit was exceeded for TSS at 75.0 mg/L. The MSOP sets forth a weekly average limit of 45 mg/L and a monthly average limit of 30 mg/L for TSS. After collecting samples for analysis, department staff observed the WWTF's receiving stream for Outfall No. 002 and documented a small amount of algae in the stream which had discharged from the lagoon. Algae was also observed approximately 15 yards downstream of the outfall location. Based upon the violations observed during the inspection, the WWTF was found to be in non-compliance with the MCWL.

11. On October 14, 2014, the department issued NOV No. NER2014092311304140 to the Respondent for the violations observed during the September 17, 2014, inspection. The NOV required the Respondent submit a written response for the violations to the department by November 4, 2014.
12. On December 11, 2014, the department received an electronic correspondence from the Respondent, including an engineering evaluation report of the winery WWTF in response to the October 14, 2014, NOV. The engineering report, prepared by Mr. Dennis Sievers of The Sewage Doctor, LLC, recommended increased aeration to address the chronic TSS and BOD exceedances from the WWTF.
13. On January 22, 2015, the department sent an engineering review letter to the Respondent with comments on the engineering report. The letter required the comments be addressed and a modified evaluation be submitted to the department for review by February 23, 2015.

14. On February 19, 2015, the department received a response to the engineering review comments letter from the winery's engineer, Mr. Sievers. On March 9, 2015, the department sent a second comment letter to the Respondent stating that the response received on February 19, 2015, was incomplete and required further information. The letter required that comments be addressed and a modified evaluation be submitted to the department for review by March 30, 2015.
15. On March 31, 2015, the department received a response from the Respondent requesting an extended deadline from February 23, 2015 to August 23, 2015, in order to submit an antidegradation report required from the engineering review and a more in depth engineering evaluation. The response also stated that the Respondent was in the process of procuring a larger engineering firm to look into alternatives to the current WWTF system to bring the WWTF into compliance with the MCWL.
16. On April 23, 2015, the department issued NOV No. NER2015041013555010 to the Respondent for failure to meet effluent limits for BOD and TSS and failure to submit complete DMRs. The NOV acknowledged the Respondent's request for an extension to submit the modified engineering evaluation, but due to the requested length of the deadline extension and the unresolved violations to MSOP effluent limitations, the violations were being referred to the department's Compliance and Enforcement section for further enforcement action.
17. On April 30, 2015, the department's Compliance and Enforcement section received an electronic correspondence from the department's Northeast Regional Office stating that they had spoken with the Respondent and that he has been working with the United States Department of Agriculture (USDA) for funding and has also spoken with Boone

County Regional Sewer District about possibly connecting the winery to the city of Rocheport's WWTF.

18. On August 5, 2015, the department's Compliance and Enforcement section received a phone call from the Respondent updating the department on a meeting held between the Respondent, USDA, the Boone County Sewer District and the County Commissioner on July 30, 2015. The Respondent informed the department that negotiations were still ongoing for connecting to the city; however, in the short term, the Respondent coordinated with his septic pumping company to pump the septic waste and haul it to a permitted WWTF until the pumping company obtains a MSOP to land apply the waste on the Respondent's land.
19. On September 3, 2015, the department Compliance and Enforcement section received an electronic correspondence from the Respondent stating that his pumping company had received MSOP No. MO-G821211 to land apply wastewater from the septic tanks and/or lagoon as necessary to prevent discharge.
20. Section 644.076.1, RSMo makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes penalties up to \$10,000.00 per day per violation.

#### **STATEMENT OF VIOLATIONS**

The Respondents have violated the MCWL and its implementing regulations as follows:

21. Caused pollution of a tributary to Bell Branch, waters of the state, or placed or caused or permitted to be placed, water contaminants in a location where they are reasonably

certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

22. Failed to comply with the effluent limits contained in Part "A" of MSOP No. MO-0130923, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.
23. Failed to submit timely and complete DMRs as required in Part "A" of MSOP No. MO-0130923, in violation of Section 644.076.1, RSMo and 10 CSR 20-7.015(9)(D)1.
24. Failed to operate and maintain WWTFs to comply with the MCWL and applicable permit conditions, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

#### **AGREEMENT**

25. The department and the Respondents desire to amicably resolve all claims that may be brought against the Respondents for violations alleged above in Statement of Violations.
26. 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 as the Respondents under this AOC.
27. The Respondents in compromise and satisfaction of the department's claims relating to the above referenced violations agree without admitting liability or fault, to pay a penalty in the amount of \$6,000.00. The parties further agree that \$3,000.00 shall be paid upfront and the remaining \$3,000.00 will be suspended for a period of two years from the effective date of this AOC on the conditions the Respondents comply with the conditions

and requirements of this AOC and no further violations occur. The payment in the amount of \$3,000.00 shall be in the form of a check made payable to the “*Boone County Treasurer, as custodian of the Boone County School Fund*” and is due and payable upon execution of this AOC by the Respondent. The check and the signed copy of this AOC shall be delivered to:

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

28. In the period of time from the effective date of this AOC until the WWTF is connected to an area-wide sewer authority system or department approved upgrades are made that will enable the effluent comply with the final limitations contained in the MSOP, the Respondent shall operate the existing WWTF at all times in compliance with the conditions and requirements of MSOP No. MO-0130923. All units or components of the existing WWTF shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the WWTF.
29. In the period of time from the effective date of this AOC until the WWTF is connected to an area-wide sewer authority system or department approved upgrades are made that will enable the effluent to comply with the final limitations contained in the MSOP, the Respondent agrees and is ordered to pump and haul the Winery’s domestic wastewater from the separate domestic wastewater septic tanks to either a permitted WWTF capable of accepting and treating the wastewater or using a contract wastewater hauler permitted to land apply in order to cease all domestic wastewater from being deposited into the winery’s process wastewater lagoon.

30. The Respondent agrees and is ordered to maintain receipts and a log showing the date, gallons pumped and the permitted WWTF accepting the domestic wastewater load when pumping and hauling. The Respondent shall to submit quarterly copies of the receipts and log to the department by the 28th day following each quarter. Should the septic tanks not require pumping, the Respondent shall submit the log with a statement indicating that pumping was not necessary with an explanation of why Respondent did not pump the septic tanks during that quarter.
31. For the period of no less than six months (or two quarters) from the effective date of this AOC, the Respondent agrees and is ordered to submit monthly sample results of the WWTF wastewater to the department to determine if the WWTF will meet permitted effluent limitations when the presence of domestic wastewater has been eliminated from the WWTF.
32. In the event the WWTF wastewater consistently meets effluent limitations after the domestic wastewater has been eliminated, the Respondent shall operate the existing WWTF at all times in compliance with the conditions and requirements of MSOP No. MO-0130923 and comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future until the WWTF is connected to an area-wide sewer authority system.
33. In the event the discharge of wastewater from the WWTF does not comply with its permitted effluent limitations, Respondent shall prevent a discharge of wastewater by pumping and hauling the wastewater from the WWTF to a permitted WWTF capable of accepting and treating the wastewater or by using a contract wastewater hauler permitted to land apply. The Respondent shall continue pumping and hauling wastewater or land

applying in accordance with the issued MSOP No. MO-G821211 as necessary, to prevent any discharge of effluent that is not in compliance with its permitted limitations until such a time that the wastewater flow from the WWTF complies with its permitted effluent limitations. The Respondent shall maintain pumping and hauling receipts and submit copies of the receipts to the department each month. The records shall be submitted to the department by the tenth day of the following month and include the date the wastewater was pumped; number of gallons pumped; and the name of the wastewater hauler and the name of the permitted WWTF accepting the wastewater.

34. In the event the discharge of wastewater from the WWTF does not comply with its permitted effluent limitations, Respondent agrees and is ordered to adhere to the following schedule:
  - i. Within 60 days of the department's determination that the WWTF effluent does not comply with its permitted effluent limitations, the Respondent shall 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 WWTF and its ability to comply with the applicable effluent limitations. The engineering report shall identify alternatives to upgrade, replace, or eliminate the WWTF that will result in compliance with all effluent limitations contained in MSOP No. MO-0130923. 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 which will be required when the MSOP is renewed. The engineering report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8. If applicable, the Respondent

shall 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.

- ii. Within 15 days of receipt of department comments on the preliminary engineering report, Respondents shall respond in writing to the department addressing all department comments on the engineering report to the department's satisfaction.
- iii. If the department approved alternative is to upgrade or replace the WWTF, the Respondents shall 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 permit 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 Respondents shall 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.
- iv. If the department approved alternative is connection to an area-wide wastewater treatment and collection system, the Respondent shall complete construction of a sewer extension by 365 days of the department's approval to connect to an area-wide wastewater treatment and collection system. The sewer extension shall be designed and sealed by a professional engineer registered in the state of Missouri in accordance with 10 CSR 20 Chapter 8 and shall be constructed in

accordance with the registered professional engineer's design and plans. If the sewer extension and collection system will be greater than or equal to 1000 feet in length and will include more than two lift stations, Respondents shall submit to the department a complete application for a construction permit including the plans and specifications sealed by a professional engineer and the applicable fee for the sewer extension. Prior to beginning construction of the sewer extension, the Respondent shall obtain all necessary easements, approval from the municipality accepting the connection, and if applicable, a construction permit from the department. If a construction permit is not required for the sewer extension, Respondents shall submit to the department a copy of the plans and specifications sealed by a professional engineer licensed to practice in the state of Missouri 30 days prior to beginning construction of the sewer extension.

- v. If the existing WWTF is to be abandoned, the Respondent shall submit a closure plan for department approval on or before 365 days of the department's approval to connect to an area-wide wastewater treatment and collection system. If the existing WWTF will be incorporated in the new department approved wastewater treatment system, a closure plan will not be required.
- vi. Within 15 days of receipt of department comments on the closure plan, Respondents shall respond in writing to the department addressing all department comments on the construction permit application, plans and specifications to the department's satisfaction.
- vii. Within 180 days of the date the department issues a construction permit for WWTF upgrades, or if applicable, approves the plans and specifications for sewer

extension to connect to an area-wide sewer authority system, the Respondent shall complete construction pursuant to the department approved plans and specifications and achieve compliance with all applicable permitted effluent limitations or divert the flow from the mobile home park to the area-wide sewer system.

- viii. Within 15 days of completing construction, the Respondent shall 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.
- ix. If applicable, within 120 days of diverting the wastewater flow from the WWTF to a department approved WWTF or an area-wide sewer system, but not before receiving written approval from the department for the WWTF closure plan, Respondents shall: i) complete closure of the WWTF pursuant to the closure plan as approved by the department; (ii) stabilize the disturbed area with perennial vegetation with 70 percent fully established plant density over 100 percent of the disturbed area; and (iii) submit to the department an application to terminate MSOP No. MO-0054038.

### **SUBMISSIONS**

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

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

**OTHER PROVISIONS**

36. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondents shall notify the department by telephone or electronic mail i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the department, the Respondents shall submit to the department for review and approval a written request containing the same information. The department may grant an extension if it deems appropriate. Failure to submit a written notice to the department may constitute a waiver of the Respondents' right to request an extension and may be grounds for the department to deny the extension.
37. Compliance with this AOC resolves only the specific violations described herein, and this AOC 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.
38. Nothing in this AOC forgives the Respondents 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 non-compliance with the laws of the state of Missouri.

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 within are 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.

39. 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.
40. The effective date of the AOC shall be the date the department signs the AOC. The department shall send a fully executed copy of this AOC to the Respondents for their records.

#### **NOTICE OF APPEAL RIGHTS**

41. By signing this AOC, the Respondents consents to its terms and waive 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.

**SIGNATURE AUTHORITY**

Agreed to and Ordered this 23 day of November, 2015

Curtis Bourgeois  
Curtis Bourgeois

Agreed to and Ordered this 8<sup>th</sup> day of December, 2015

John Madras  
DEPARTMENT OF NATURAL RESOURCES  
John Madras, Director  
Water Protection Program

Copies of the foregoing served by certified mail to:

Mr. Curtis Bourgeois                      CERTIFIED MAIL # 7012 2920 0002 0660 5828  
P.O. Box 118  
Rocheport, MO 65279

c:     Ms. Irene Crawford, Director, Northeast Regional Office  
       Ms. Diane Huffman, Environmental Protection Agency  
       Missouri Clean Water Commission  
       Accounting Program

