

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI**

IN THE MATTER OF:

Lost Canyon Lakes Lot Owners Association
Wastewater Treatment Facilities

No. 2015-WPCB-1262

SERVE:

Ms. Tammy Spyers, President
Lost Canyon Lakes Lot Owners Association
Mr. William Griffin, Park Administrator
Lost Canyon Lakes

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1262, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because the wastewater treatment facilities (WWTF) serving Lost Canyon Lakes is in violation of 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 Lost Canyon Lakes Lot Owners Association 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. Once full executed and effective, this AOC will nullify the department's denial of Missouri State Operating Permit (MSOP) No. MO-0035645 instated on February 20, 2014.

II. FINDINGS OF FACT

A. The Lost Canyon Lakes Lot Owners Association is a non-profit corporation registered and in good standing with the Missouri Secretary of State. The association is also known as Wildwood Lot Owners Association, which is a fictitious name registered with the Missouri Secretary of State. As part of its

business the association owns and operates two WWTFs which serve a private campground, located in Callaway County. The campground includes approximately 1,755 lots located on 1,200 acres.

- B. The WWTFs serving the campground include a three-cell facultative lagoon and an extended aeration treatment system (mechanical plant). The lagoon is located in the NW ¼, SE ¼, Section 26, Township 47 North, Range 8 West, Callaway County and the design population equivalent is 368 and the design flow is 25,000 gallons per day (gpd). The mechanical plant is located in the NW ¼, NW ¼, Section 1, Township 46 North, Range 8 West, Callaway County and the design population equivalent is 50 and the design flow is 3060 gpd. Effluent from the lagoon discharges through Outfall No. 001 and effluent from the mechanical plant discharges through Outfall No. 002 to a tributary to Cow Creek, pursuant to the conditions and requirements of the MSOP No. MO-0035645.
- C. On March 30, 2007, the department issued MSOP No. MO-0035645 to the association which expired by its own terms on March 29, 2012. The MSOP requires the association to sample the effluent discharged from Outfall No. 001 and Outfall No. 002 and chemically analyze the effluent sample for the water contaminants listed in Part "A" every month. The MSOP also requires the effluent to comply with the 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 28th day of the month following the reporting period. The MSOP included a Schedule of Compliance (SOC) requiring the Association to: (i) comply with final limitations for Fecal Coliform at Outfall No. 001 by March 28, 2012; (ii) present an evaluation to show that disinfection is not required to protect one or both recreational uses; or (iii) present a Use Attainability Analysis (UAA) demonstrating one or both designated recreational uses are not attainable in the classified waters receiving the effluent. To date the association has not completed any of the requirements contained in the SOC of the MSOP.
- D. Cow Creek and their tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- E. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- F. Pursuant to 644.051.10, RSMo. applications for renewal of a site-specific MSOP shall be filed at least 180 days prior to the expiration of the existing MSOP. On May 23, 2013, the department received a renewal application from the association for the MSOP that expired on March 29, 2012.
- G. Pursuant to 19 CSR 20-3.060(6)(F) holding tanks are limited to temporary use for situations where a public sewer will be available, or where an approved onsite system will be installed within a year. The long-term use of holding tanks is approved only as a system of last resort.

- H. According to the plat maps filed with the Callaway County Recorder's Office, there have been ten plats filed by the association. On April 20, 1973, the first two plats were filed with the County. Turkey Park plat contains 321 lots on 142.08 acres and Robin Park has 235 lots on 80.47 acres. On June 5, 1974, Deer Park was platted and had 240 lots. Crow Park Plat 1/Pheasant 1 Park was platted shortly after on June 7, 1974, on 16.11 acres with 28 lots. On July 4, 1974 and May 28, 1976, Beaver Park 1 and 2 were platted on 189.87 acres with a total of 350 lots. On August 4, 1976, Canyon View was platted with a total of 219 lots on 72.14. Pheasant Park Plat 2 was first recorded on April 1981 and then modified on June 26, 1981, with 206 lots. On June 29, 1981, Crow Park Plat 2 was recorded with 107 lots.
- I. The Missouri Clean Water Commission Regulations for the Disposal of Wastewater in Subdivision that became effective June 30, 1974, required the developer of residential and recreational subdivisions subject to the regulation to submit to the Clean Water Commission a report prepared by an engineer outlining plans for the disposal of wastewater within the subdivision. The regulation required the report to be approved in writing by the agency prior to the sale, lease of any land, or start of any construction within the subdivision. The department has not received any records or approved a report as required by the June 30, 1974, regulations.
- J. On June 22, 2012, the department issued Notice of Violation (NOV) No. NER201204238223012 to the association for failure to comply with effluent limitations. DMRs submitted to the department documented that the effluent failed to comply with Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD) at Outfall No. 001 during the months of September and October of 2011 and Total Residual Chlorine (TRC) and BOD during the months of June and October 2011 and January through April of 2012 at Outfall No. 002. The DMRs also documented that the effluent failed to comply with Fecal Coliform during the month of October 2011 and the months of April, May, August, and September of 2012. The NOV required a written report by July 13, 2012, which explains the cause for the non-compliance, exact dates of non-compliance, date upon which the association returned to compliance, and what steps the association performed to prevent a reoccurrence of the violation.
- K. On February 20, 2013, department staff conducted an investigation at the campground in response to a concern that wastewater was leaking through the lagoon berm. Mr. Stan Altman, Maintenance Manager, and Mr. Jim Bumpus, met with the department staff and accompanied the inspector throughout the tour of the WWTFs. During this investigation, department staff found damaged sections around perimeter fence surrounding the lagoon, erosion damage on the inner berm slopes of the primary and secondary cells, no warning signs around the mechanical plant, deep-rooted vegetation growing on the outer berm slope of the primary lagoon, and Outfall No. 001 was not clearly marked with a sign. Department staff observed that the entrance gate to the mechanical facility was unlocked and that Outfall No. 002 was not marked with a sign. As part of the

inspection, staff reviewed the DMRs associated with MSOP No. MO-0035645. Records indicate that Outfall No. 002 from the mechanical facility exceeded the effluent limitation of TRC for July 2012. Fecal Coliform exceeded the effluent limitations for April, May, August, and September of 2012. The Wildwood Lot Owners Association also failed to submit flow data on 2012 DMRs. Pursuant to MSOP No. MO-0035645, flows are required to be recorded and submitted with DMRs. In addition, the department documented that the association failed to maintain the discharge from the WWTF within the adjusted design flow, apply for a renewal of the MSOP, and submit a Form S-Domestic Sludge Reporting.

- L. On May 23, 2013, the department received a renewal application from the association for the MSOP.
- M. The DMRs submitted by the association to the department between January 2013 and February 2014 report no discharge at Outfall No. 001 in 13 of the 14 months and at Outfall No. 002 in seven of the 14 months. The DMRs indicate that Outfall No. 002 exceeded the effluent limitation for BOD in July 2013 and for TSS in April and December of 2013.
- N. On August 16, 2013, the department received correspondence from the association explaining several corrective actions the association completed to fix violations documented in NOV No. NER2013030811504260. The corrective actions included submitting late DMRs and missing reports, clearly marking the outfalls, submitting a permit application for the swimming pool, repairing fence surrounding the lagoon, fixing the lagoon berm slope to 3:1, removing deep rooted vegetation, and providing a lockable gate to the WWTF.
- O. On February 20, 2014, the department issued a letter to notify the association the renewal application associated with MSOP No. MO-0035645 was denied, pursuant to Section 644.051.4, for failure to upgrade the WWTF. The letter also stated the WWTF was not authorized to discharge and that any discharge would be a violation of sections 644.051.2 and 644.076.1 RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).
- P. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establish civil penalties of up to 10,000.00 per day per violation.

III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed by the association at the WWTF are as follows:

- A. Failed to submit complete, accurate, and timely DMRs as required in Part "A" of MSOP No. MO-0035645, in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1;

- B. Since April 2012, failed to comply with the effluent limitations contained in Part A of MSOP No. MO-0035645, in violation of Sections 644.051.1(3) and 644.076.1, RSMo;
- C. Failed to install disinfection, present an evaluation to show that disinfection is not required to protect one or both recreational uses, or present an UAA that demonstrates one or both designated recreational uses are not attainable in the classified waters receiving effluent, as required in Part "B", Standard Conditions, and Part C, SOC, of MSOP No. MO-0035645, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A);
- D. Caused potential pollution of a tributary to Cow Creek, waters of the state, or placed or caused or permitted to be placed water contaminants in locations 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;
- E. Since at least March 29, 2012, operated, used or maintained a wastewater contaminant source, a wastewater treatment lagoon, which intermittently discharges to waters of the state without an MSOP, in violation of Sections 644.051.2 and 644.076.1, RSMO and 10 CSR 20-6010(1)(A) and (5)(A);
- F. Failed to clearly mark the outfall in the field, as required by Special Conditions of MSOP, in violation of Section 644.076.1, RSMo;
- G. Failed to provide proper warning signs on all sides of the perimeter fence, in violation of 10 CSR 20-8.020(11)(C)11.G; failed to provide a lockable gate, in violation of 10 CSR 20-8.020(11)(C)11.F;
- H. Failed to maintain the inner berm slopes of the lagoon to be no less than three to one (3:1), in violation of 10 CSR 20-8.020(13)(A)3.C.;
- I. Failed to remove deep-rooted vegetation growing on the lagoon berms, in violation of 10 CSR 20 8.020(13)(A)3.G.;
- J. Failed to provide adequate fencing to prevent unauthorized access, in violation of 10 CSR 20-8.020(11)(C)11.A;
- K. Failed to submit an annual sludge report as required by the Standard Conditions Part III of MSOP No. MO-0035645, in violation of Sections 644.051.1(3) and 644.076.1, RSMo;
- L. Failed to maintain the discharge from the WWTF within the adjusted design flow as required by the Special Condition No. 9 of MSOP No. MO-0035645, in violation of Section 644.076.1, RSMo; and
- M. Failed to obtain approval from the department for the method of sewage treatment and disposal in the Turkey Park plat, Robin Park plat, Deer Park, Crow Park Plat 1/Pheasant 1 Park plat, Beaver Park 1 and 2 plat, Canyon View plat, Pheasant Park Plat 2 and Crow Park Plat 2 prior to the sale or lease of any lot, or the commencement of construction on any lot by the developer or any person in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.030(7)(B).

IV. AGREEMENT

- A. The department and the association desire to amicably resolve all claims that may be brought against the association for violations alleged above in Section III, Citations and Conclusions of Law, without the association admitting to the validity or accuracy of such claims.
- B. 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 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 of the association under this AOC.
- C. The association in compromise and satisfaction of the department's claims relating to the above-referenced violations agrees and is ordered, without admitting liability or fault, to pay a civil penalty in the amount of 14,000.00. The department and the association agree that \$7,000.00 of the \$14,000.00 civil penalty will be suspended on the condition the association complies with the conditions and requirements of this AOC and MSOP No. MO00356453. Upon determination that the association has failed to comply with this AOC or MSOP No. MO-00356453, the department shall send a written demand for the suspended penalty to the association. The payment shall be in the form of a check made payable to the "Callaway County School Treasurer, as custodian of the Callaway County School Fund." The check in the amount of \$7,000.00 is due and payable upon execution of this AOC by the association. The check and signed copy of the AOC shall be delivered to:
- Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176
- D. In the period of time from the effective date of this AOC the association agrees to take all reasonable efforts to operate and maintain the existing WWTFs at all times in compliance with the conditions and requirements of the applicable MSOP including all effluent limitations with the exception of Fecal Coliform at Outfall No. 1. All units or components of the existing WWTFs 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. The WWTF shall also be maintained in operable condition accordance with Missouri Clean Water Regulation 10 CSR 20-8.
- E. The association agrees and is ordered to continue pumping and hauling wastewater from all holding tanks as necessary, to prevent any overflows of sewage. The association agrees and is ordered to maintain a log showing the day, lot number, gallons pumped and the permitted WWTF accepting the load. The association agrees and is ordered to submit quarterly copies of the log to

Ms. Erin Meyer, department of Natural Resources, Water Protection Program, Compliance and Enforcement Section, P.O. Box 176, Jefferson City, Missouri 65102 by the 28th day following each quarter.

- F. The association agrees and is ordered to report all overflows of sewage from the holding tanks to the department within 24 hours of becoming aware of the overflow. The association may report overflows using the department's online system at <http://www.dnr.mo.gov/mosso/> or by calling the Northeast Regional Office at (660) 380-8000 Monday through Friday between 8:00 a.m. and 5:00 p.m., or the 24 hour Spill Line at (573) 634-2436 after hours, weekends, and holidays.
- G. Within 30 days of the effective date of this AOC, the association agrees and is ordered to submit to the department a complete Form B, Application for Operating Permit, supplementing and providing current information from the May 2013 permit application, for department review and approval.
- H. Within 120 days of the effective date of this AOC, the association agrees and is ordered to complete steps necessary to prohibit the installation of new holding tanks at new locations, pending completion of the Report required by Paragraph J, below. Once the association has completed the steps necessary to prohibit the installation of new holding tanks at new locations as required above in this paragraph, the Association agrees and is ordered that it will not allow the installation of holding tanks or new connections to the existing holding tanks without prior department approval.
- I. The association agrees to complete upgrades or replace its WWTFs to comply with the MCWL and its implementing regulations and all conditions and requirements of its MSOP including all applicable effluent limitations in the MSOP. 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. 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:
 - i. Within 365 days of the effective date of this AOC, the association agrees to submit to the department for review and approval, a preliminary engineering report concerning the association's treatment and holding WWTFs developed in accordance with the requirements of 10 CSR 20-8.110 and prepared by a professional engineer licensed to practice in the state of Missouri. The report shall recommend upgrades or replacement of its WWTF to enable the association to comply with the MCWL and its implementing regulations and all conditions and requirements of its MSOP. It is agreed that this preliminary report shall be general in nature, as significant additional research may be needed to assure the feasibility of the proposals set forth therein.

- ii. Within 30 days of receipt of department comments on the association's engineering report, the association agrees and is ordered to respond to and address all of the department's comments on the report.
 - iii. Within 120 days of the department's approval of the engineering report, the association agrees and is ordered 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 improvements that will enable the effluent to comply with final effluent limitations contained in the MSOP.
 - iv. Within 30 days of receipt of department comments on the association's construction permit application, the association agrees and is ordered to respond to all of the department's comments on the construction permit application.
 - v. Within 180 days of the date the department issues the association a construction permit, the association agrees and is ordered to complete construction of the improvements as approved by the department. In the event construction cannot feasibly be completed within 180 days, the association may request an extension of time for completion of construction. Any request should be made within 10 days of determining construction cannot feasibly be completed with 180 days of the department's issuance of a construction permit. Such request will provide an estimated time for completion of construction and the reasons construction cannot feasibly be completed within 180 days. The department will promptly respond to the request for extension. The department's decision to grant an extension will not be unreasonably withheld.
 - vi. Within 30 days of completing construction, the association agrees and 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 is complete and operable in accordance with department approved plans and specifications, and a complete application with the applicable fee to modify the MSOP.
 - vii. Within 60 days of completing construction of the improvements, the association agrees and is ordered to achieve compliance with the applicable effluent limitations contained in Part "A" of the MSOP.
- J. Within 365 days of the effective date of this AOC, the association agrees and is ordered to submit to the department for review and approval, a plan signed and sealed by a professional engineer licensed to practice in the state of Missouri recommending corrective actions and potentially a schedule to eliminate the use of holding tanks in the campground through connecting to a centralized collection system constructed pursuant to Missouri Clean Water Regulation 10 CSR 20-8 or

decommission the holding tanks so that they are not usable. In the alternative, said proposal may appropriately address alternative plans to address the long-term treatment of sewage through a stipulated and agreed upon method and system. In the event the department does not approve the plan, the parties will engage in informal negotiations to resolve the dispute for a period of up to 120 days, or longer if agreed by the parties in writing.

- K. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the association agrees and is ordered to 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 association shall submit to the department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The department may grant an extension if it deems appropriate. The department's decision to grant an extension will not be unreasonably withheld. Failure to submit a written notice to the department may constitute a waiver of the association's right to request an extension and may be grounds for the department to deny the association an extension.
- L. Upon the execution of this AOC, the department shall rescind the MSOP denial issued on February 20, 2014, and reissue MSOP No. MO-0035645 to the association.
- M. Should the association fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs D through J, the association agrees and is ordered to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a certified or cashiers check made payable to "Callaway County Treasurer, as custodian of the Callaway County School Fund." Any such stipulated penalty shall be paid within ten days of demand by the department and shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

- N. Nothing in this AOC forgives the association 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 for 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 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.

- O. 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.
- P. 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 association for its records.
- Q. The association shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, the association consents to its terms and waives 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.

The parties hereto agree that Lost Canyon Lakes Lot Owners Association has not waived any rights to challenge the applicability of certain department regulations to areas plotted prior to June 30, 1974 by entering into this AOC.

VI. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

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

Agreed to and Ordered this 2nd day of September, 2015

John Madras

John Madras, Director
Water Protection Program
Missouri Department of Natural Resources

Agreed to and Ordered this 19 day of AUGUST, 2015

William A. Griffith

William A. Griffith, Park Administrator
Lost Canyon Lakes

Copies of the foregoing served by certified mail to:

Mr. William A. Griffith, Park Administrator
Lost Canyon Lakes
Wildwood Estates Drive
Steedman, MO 65077

Ms. Tammy Spyers, President
Lost Canyon Lakes Lot Owners Association
Lost Canyon Lakes
Wildwood Estates Drive
Steedman, MO 65077

Mr. Dave Bandré
Attorney at Law
227 Madison
Jefferson City, MO 65101

CERTIFIED MAIL #

Ms. Brittany A. Barrientos
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Brittany.barrientos@stinsonleonard.com

c: Ms. Diane Huffman, Environmental Protection Agency
Mr. Chris Wieberg, Chief, Operating Permits Section
Ms. Irene Crawford, Director, Northeast Regional Office
Missouri Clean Water Commission
Accounting Program