

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 63 Diner)
 Wastewater Treatment Facility) **Order No. 2016-WPCB-1395**
)
)
 Serve:)
 Norton and Mary Evans)
)

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2016-WPCB-1395, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because the wastewater treatment facility (WWTF) which previously served 63 Diner 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 Mr. Norton and Ms. Mary Evans (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 Respondents owned and operated the 63 Diner located at 5801 Highway 763 North, in Columbia, Missouri. On August 2, 2005, the Respondents sold the diner to the 63 Diner North, LLC. At the time of purchase, a Sewer Treatment Plant Easement and Sewer Line Easement between the Respondents and the 63 Diner North, LLC was executed. According to this easement, the Respondents granted 63 Diner North, LLC (located on tract A) a perpetual, nonexclusive sewer treatment plant easement over tract A for the use and benefit of the present and future owners of tract B.
2. On April 30, 2008, Premier Bank foreclosed on the 63 Diner North, LLC, and on May 20, 2009, the bank sold the diner to Jay Montgomery, JCMJ, LLC.
3. Missouri State Operating Permit (MSOP) No. MO-0108448 was issued to the Respondents on September 16, 2011, and is set to expire on September 15, 2016. The MSOP authorizes the discharge of wastewater from the WWTF in accordance with the effluent limitations and monitoring requirements set forth in the MSOP.
4. MSOP No. MO-0108448 requires the Respondents 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-0108448 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 28th day of the month following the reporting period.
5. MSOP No. MO-0108448 also included a Schedule of Compliance (SOC) requiring the Respondents to meet the final effluent limitations for E. coli by December 31, 2013, in accordance with the following schedule: i) within nine months from the issuance of the

MSOP, submit to the department an engineering plan, construction permit application and an activity schedule toward meeting disinfection requirement, if disinfection is required to meet final effluent limitations; ii) within one year of issuance of the MSOP, the permittee shall report progress made in attaining compliance with the final effluent limitations; iii) within two years of issuance of the MSOP; the permittee shall submit a report detailing progress made in attaining compliance with the final effluent limitations; and iv) notify the department if the permittee fails to meet any of the interim dates.

6. The MSOP also included a SOC that required the Respondents to meet final effluent limitations for Ammonia as Nitrogen by September 16, 2014, through the following schedule: i) if modifications to the WWTF are required to meet the final effluent limitations, the permittee shall submit engineering plans, specifications, and a construction permit application by September 16, 2012, for changes to the WWTF to meet final limitations for Ammonia; ii) if completion of construction will be more than one year, permittee shall submit interim progress reports every 12 months from September 16, 2011; iii) if it is determined modifications are not needed to meet the final effluent limitations, the permittee shall submit a letter to the department by September 16, 2012, stating that modifications are not needed; and iv) the WWTF will meet final limits by September 16, 2014.
7. Department records indicate that Respondents have failed to submit quarterly DMRs for the first, second, third, and fourth quarters of 2014; and the first, second, and third quarters of 2015.
8. Rocky Fork and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.

9. On September 18, 2012, department staff conducted a routine inspection of the WWTF with Mr. Montgomery and Ms. Julie Cook present. Department staff discussed the SOC in the MSOP and Mr. Montgomery informed staff that they would like to connect the flows from the diner to the city of Columbia's sanitary sewer system instead of upgrading the current WWTF. During the inspection, department staff observed a layer of sludge in the sludge basin and in the clarifier. Staff documented that the gate was not locked; no warning signs were posted; and a section of the fence around the WWTF was lying on the ground. As part of the inspection, staff conducted a file review of the MSOP and found that the permittees had failed to comply with the SOC in the MSOP; failed to submit annual sludge reports; and failed to submit DMRs.
10. On October 30, 2012, the department issued Notice of Violation (NOV) No. NER20121023073772742 to Mr. Jay and Ms. Julie Montgomery for violations of the MCWL. The inspection report associated with the NOV required the Montgomery's to submit a response to the department by November 20, 2012, for an extension to the SOC; submit the missing reports, or an explanation why the reports are not available; and post warning signs; place a lock on the gate; and repair the fence.
11. On May 1, 2013, the department received correspondence from Ms. Cook requesting an extension to connect the flows from the diner to the city of Columbia's system. Ms. Cook further explained that they will submit a facility plan/engineering report by July 1, 2013, along with a construction permit, and construction will be completed by December 31, 2013. Additionally, she stated that the sludge report will be submitted; the fence will be repaired; warning signs will be posted; and the gate will be locked.

12. On May 1, 2013, the department sent correspondence to Ms. Cook approving the proposed schedule to complete construction by December 31, 2013.
13. On February 11, 2014, department staff conducted a routine compliance inspection of the WWTF with Mr. Montgomery present. Staff inquired about the status of construction activities and Mr. Montgomery stated that he has not started any construction activities and no schedule has been made. During the inspection, staff found that the outfall was not marked; a section of the fence was lying on the ground; the gate to the WWTF was not locked; and no warning signs were posted. Department staff could not determine the outfall location due to accumulation of snow on the ground.
14. On March 25, 2014, the department issued NOV No. NER2014030410573942 to Mr. Montgomery and Ms. Cook for violations of the MCWL observed during the February 11, 2014, inspection. The inspection report associated with the NOV informed Mr. Montgomery and Ms. Cook that the matter was being referred to the Water Pollution Control Branch, Compliance and Enforcement Section and to coordinate with the section to resolve the violations.
15. On August 26, 2015, department staff met with Ms. Evans to discuss the steps necessary to bring the WWTF into compliance with the MCWL. Ms. Evans informed staff that Mr. Montgomery purchased the business from Premier Bank on April 30, 2008, and they have a verbal agreement that Mr. Montgomery will cover all the upgrades; is the continuing authority for the WWTF; and has been the primary contacts since 2012. Ms. Evans further stated that on April 6, 2015, Providence Bank foreclosed on the diner property.

16. 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:

17. Failed to comply with the SOC for meeting E. coli and Ammonia as Nitrogen effluent limitations as required in Part "A", Effluent Limitations and Monitoring Requirements of MSOP No. MO-0108448, in violation of Section 644.076.1 RSMo, and 10 CSR 20-6.010 (7)(A).
18. Failed to submit quarterly DMRs as required in Part "A" of MSOP No. MO-0108448, in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(D)1;
19. Failed to submit annual sludge reports as required by the Standard Conditions of MSOP No. MO-0108448, in violation of Section 644.076.1, RSMo.;
20. Failed to clearly mark the outfall in the field, as required by Special Conditions in the MSOP No. MO-0108448, in violation of Section 644.076.1, RSMo.;
21. 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;
22. Failed to provide adequate funding to prevent unauthorized access, in violation of 10 CSR 20-8.020 (11) (C) 11.A; and
23. Failed to lock the gate for the WWTF to prohibit entry of the enclosure, in violation of 10 CSR 20-8.020 (11) (C) 11.F and Section 644.076.1, RSMo.

AGREEMENT

24. 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.
25. 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.
26. 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 \$9,292.00. The parties further agree that \$4,500.00 shall be paid upfront and the remaining \$4,792.00 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 \$4,500.00 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 Respondents. 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

27. In the period of time from the effective date of this AOC until the WWTF is properly closed in accordance with a department approved closure plan and MSOP No. MO-0108448 is terminated, the Respondents agree and are ordered to cap the WWTF's discharge pipe and pump and haul the wastewater from the WWTF to a permitted WWTF capable of accepting and treating the wastewater. The Respondents agree and are ordered to continue pumping and hauling wastewater to prevent any overflows, discharges, or bypasses of sewage to waters of the state until the MSOP is terminated. Additionally, the Respondents are ordered to maintain pumping and hauling receipts and make these receipts available to the department by the tenth day of the month following the reporting period. 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.
28. By April 1, 2016, the Respondents agree and are ordered to submit to the department for review and approval, a closure plan for the WWTF, developed in accordance with the Standard Conditions, Part III, Section I, of MSOP No. MO-0108448 and a Facility Closure Request Form (780-2512).
29. The Respondents agree and are ordered to complete closure of the WWTF and submit a complete application to terminate MSOP No. MO-0108448 to the department by September 15, 2016.
30. The Respondents agree and are ordered to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

SUBMISSIONS

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

Mr. Travis Lyon
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

32. 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.
33. 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.

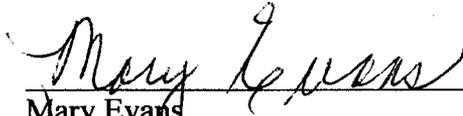
34. Nothing in this AOC forgives the Respondents from future non-compliance with the laws of the state of Missouri, nor requires the department or state of Missouri to forego pursuing by any legal means any non-compliance with the laws of the state of Missouri. The terms stated herein constitute the 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.
35. 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.
36. 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

37. 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 19 day of February, 2016

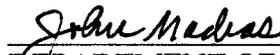


Mary Evans



Norton Evans

Agreed to and Ordered this 19th day of March, 2016



DEPARTMENT OF NATURAL RESOURCES
John Madras, Director
Water Protection Program

Copies of the foregoing served by certified mail to:

Ms. Mary Evans CERTIFIED MAIL # 7012 2920 0002 0660 6542
4601 Bonne Femme Church Road
Columbia, MO 65201

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