

IN THE CIRCUIT COURT OF PULASKI COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
 Attorney General Chris Koster, the)
 Missouri Department of Natural)
 Resources, the Missouri Mining)
 Commission, and the Missouri)
 Clean Water Commission,)
)
 Plaintiff,)
)
 v.)
)
 RICKY LEE BAKER, individually, and)
 D/B/A BAKER SAND & GRAVEL ,)
)
 Defendant.)

FILED

MAY 27 2016

RACHELLE BEASLEY
CIRCUIT CLERK & EX. OFFICIO
RECORDER OF DEEDS
PULASKI COUNTY, MO

Case No. 14PU-CV01573

Consent Judgment

The Plaintiff, the State of Missouri, and Defendant, Ricky Baker individually and D/B/A Baker Sand & Gravel, assent to the entry of this Consent Judgment.

The Court has read Plaintiff's Verified Petition for Injunctive Relief and Civil Penalties, which alleges that Defendant violated the Missouri Land Reclamation Act, §§ 444.760 through 444.789 RSMo, and the Missouri Clean Water Law, § 644.076.1 RSMo. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition and that the parties want to terminate this controversy by consenting to the entry of this judgment without trial. The

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Court retains jurisdiction over this matter in order to enforce the terms of the consent judgment.

The parties hereby agree to the following:

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.

2. Terms used herein shall have the same meaning as provided in Missouri's Land Reclamation Act and the regulations adopted thereunder.

In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

b. "Defendant" means Ricky Baker, individually, and Ricky Baker d/b/a Baker Sand and Gravel.

c. "Department" means the Missouri Department of Natural Resources.

d. "Facility" means Baker Sand & Gravel mining operation.

e. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to Article V, § 14 of the Missouri Constitution

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and § 444.788 RSMo.¹ Venue is proper in this court because the Defendant's conduct giving rise to this action took place in Pulaski County.

4. The provisions of this Consent Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of, the parties to this action or their agents, servants, employees, heirs, successors, and assigns. Defendant shall provide a copy of this order to all persons or entities retained to perform work required by this order.

5. The parties must agree in writing and must receive approval from the Court in order to modify or amend this Consent Judgment.

6. Defendant shall pay all court costs attendant to this action.

I. Penalties and Injunctive Relief

7. Defendant consents to the entry of judgment in favor of the State of Missouri for a civil penalty in the amount of \$14,000.00.

8. Defendant is currently in a Chapter 13 Reorganization Bankruptcy before the Western District, State of Missouri Case No: 15-20634. The State has filed a proof of claim in this case.

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¹ All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

9. Defendant agrees to pay the \$14,000 civil penalty through monthly payments made to the Chapter 13 Trustee, Richard V. Fink. The Trustee will pay the State at the rate of \$300.00 per month out of Debtor's month payments upon confirmation of the plan.

10. The Chapter 13 Trustee shall submit a check made payable to the "State of Missouri (Pulaski County)" to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

11. Defendant has violated the Land Reclamation Act and the regulations duly promulgated thereunder between the dates of January 5, 2012 and May 4, 2015. More specifically, Defendant:

- A. conducted gravel mining operations without a permit in violation of Section 444.770.1 RSMo;
- B. failed to restrict mining activity to unconsolidated areas in violation of Missouri Regulation and Missouri Regulation 10 CSR 40-10.050(14)(B)1;
- C. failed to leave an undisturbed buffer of ten feet between the excavation area and the water's edge in violation of Missouri Regulation 10 CSR 40-10.050(14)(B)2.
- D. failed to maintain an undisturbed buffer width of twenty five feet landward of the high bank in violation of Missouri Regulation 10 CSR 40-10.050(14)(B)3;

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- E. conducted excavation deeper than the lowest undisturbed elevation of a dry stream in violation of Missouri Regulation 10 CSR 40-10.050(14)(B)4;
- F. allowed silty material to discharge into a stream in violation of Missouri Regulation 10 CSR 40-10.050(14)(B)8;
- G. placed excavation material against streambanks in violation of Missouri Regulation 10 CSR 40-10.050(14)(B)7.

12. Defendant is hereby enjoined from industrial mineral operations that require a permit from the Missouri Department of Natural Resources.

13. In the event Defendant fails to comply with the terms of this Consent Judgment, Defendant shall be liable for stipulated penalties in accordance with the following schedule:

- a. \$5,000 per day for each day of each violation occurs.

14. Stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Defendant shall pay stipulated penalties by check made payable to the "State of Missouri (Pulaski County)" and mailed, along with a copy of the State's stipulated penalty demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. The check will be deposited and processed in accordance with the consent judgment and Missouri law.

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15. Stipulated penalties shall be due and payable within ten (10) days of demand by the Attorney General's Office.

16. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

II. Satisfaction and Reservation of Rights

17. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance, and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendant is relieved of liability for the violations alleged in the petition.

18. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under The Land Reclamation Act or implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

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a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of The Land Reclamation Act or regulations promulgated thereunder.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's mining operation, acts, or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

III. Information Collection and Retention

19. The State, through its authorized representatives, shall have the right of entry into any facility covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Judgment;

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b. verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;

c. obtain documentary evidence, including photographs and similar data; and

d. assess Defendant's compliance with this Consent Judgment.

20. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits.

21. This Consent Judgment does not limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

By: 
Ricky Baker

Date: 5-10-2010

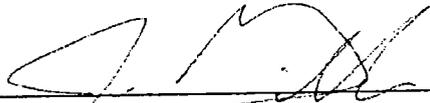
MISSOURI ATTORNEY GENERAL'S OFFICE

By: 
Brook D. McCarrick
Assistant Attorney General

Date: 5-11-10

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MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: 
Joe Gillman, Director
Division of Missouri Geological Survey

Date: 5-20-16

SO ORDERED.


Circuit Judge

Date: 5-27-2016

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