

IN THE CIRCUIT COURT OF MILLER COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)	
Koster, et al.)	
)	
Plaintiff,)	
)	
v.)	Case No. 13ML-CC00040
)	
Doyle Road Apartments, LLC, and)	
Jeanette (O’Neill) Zaroor,)	
)	
Defendants.)	

FINAL JUDGMENT

The State of Missouri, at the relation of Attorney General Chris Koster, the Department of Natural Resources and the Clean Water Commission, filed a petition for civil penalties, past due fees, and injunctive relief against the defendants on May 2, 2013. The cause was set for a bench trial on January 21, 2016.

The State seeks civil penalties for past violations of the Missouri Clean Water Law (Chapter 644 RSMo) and the implementing regulations at 10 CSR 20, in relation to the operation of the wastewater treatment facility (“WWTF”) that serves Doyle Road Apartments, in Eldon, Missouri.¹ Claims for injunctive relief against Defendants are moot, in that the property was

¹ Statutory references are to the Revised Statutes of Missouri as updated through the 2012 cumulative supplement, unless otherwise noted.

sold in foreclosure in February of 2013, and Defendants no longer own or control the WWTF. At trial, the State did not pursue the count for past-due fees.

The State appeared for trial and was prepared to proceed. Counsel for Defendant Matthew J. O'Neill appeared. Matthew J. O'Neill arrived after the trial began. Defendant Jeanette O'Neill, who was not represented, notified the Court's Clerk by phone that she would not be able to appear, without explanation. The Court treated the phone call as a motion for continuance, and denied it because the other parties and witnesses had appeared, despite difficult weather conditions.

The State asked for a recess after Matthew J. O'Neill arrived. At the conclusion of the recess, the State announced that the claims against Defendants Matthew J. O'Neill, MJO, LLC and MJO Builders, LLC, were resolved. The State requested leave to dismiss those parties with prejudice. The Court granted the motion, and the caption has been modified to reflect this change. The State proceeded against Defendants Jeanette O'Neill and Doyle Road Apartments, LLC. At the conclusion of the State's evidence, the Court took the matter under advisement.

Findings of Fact

1. Defendants Matthew J. O'Neill and Jeanette O'Neill were married to each other before 2006. [Supported by designations of Plaintiff's

depositions of Matt O'Neill (#26) and Jeanette O'Neill (#2).]²

2. Jeanette O'Neill became an independent realtor, beginning in September of 2006, and continuing through 2010. [Supported by designations of Plaintiff's deposition of Jeanette O'Neill (#23, #24).]

3. On October 12, 2006, Defendant Matthew O'Neill, as the organizer, filed Articles of Incorporation for Defendant MJO, LLC, with the Secretary of State. He was the sole member of MJO, LLC. [Supported by designations of Plaintiff's deposition of Matt O'Neill (#27); **Exhibit 1**, certified copy of records on file with the Missouri Secretary of State.]

4. On October 12, 2006, Defendant Matthew O'Neill, as registered agent for Defendant MJO, LLC, filed with the Secretary of State a Registration of Fictitious Name of "MJO Builders" for MJO, LLC. [Supported by designation of Plaintiff's deposition of Matt O'Neill (#27); **Exhibit 2**, certified copy of records on file with the Missouri Secretary of State.]

5. On September 28, 2007, B & L Veatch Properties, LLC, conveyed to MJO, LLC, a warranty deed for a tract of land described therein. The deed

² They divorced in 2013. Jeanette is remarried and is now Jeanette Zaroor, but she will be referred to as O'Neill, her name during the time pertinent to the State's claims. [Supported by designations of Plaintiff's depositions of Matt O'Neill (#26) and Jeanette O'Neill (##1, 2).]

reflects that the mailing address for MJO, LLC, was P.O. Box 1693, Lake Ozark, MO 65409. [**Exhibit 3**, a copy of the recorded deed, certified by the Miller County Recorder's Office.]

6. When MJO, LLC, purchased the property, it included two buildings, which were dilapidated, and identified by addresses as 115 and 117 Doyle Road. MJO, LLC, and Matt O'Neill rehabilitated these two buildings and built two more buildings on the property, identified as 119 and 121 Doyle Road. Wastewater from 115, 117 and 119 was discharged into lagoons that were already on the property. [Supported by designations of Plaintiff's depositions of Matt O'Neill (## 36, 37) and Jeanette O'Neill (#10).]

7. Defendant Jeanette O'Neill performed office duties for MJO, LLC, but was paid no salary. She paid the company's bills and handled its paperwork. Defendant Matt O'Neill made all decisions related to construction, including decisions related to construction permits. [Supported by designations of Plaintiff's depositions of Matt O'Neill (#29) and Jeanette O'Neill (##7, 8, 10).]

8. MJO Builders collected initially collected rent from tenants of the apartments. The initial plan for Matt and Jeanette O'Neill was to use the income for retirement and to support college education for their children. [Supported by designations of Plaintiff's depositions of Matt O'Neill (#26) and Jeanette O'Neill (#6).]

9. Near the time the first new building was being built, the O'Neills decided to form Doyle Road Apartments, LLC. [Supported by designation of Plaintiff's deposition of Matt O'Neill (#28).]

10. Doyle Road Apartments, LLC, was to be Jeanette O'Neill's job – a job she could do while taking care of their children. [Supported by designation of Plaintiff's deposition of Jeanette O'Neill (#6).]

11. On April 10, 2008, Defendant Jeanette O'Neill, as the organizer, filed Articles of Incorporation for Defendant Doyle Road Apartments, LLC, with the Secretary of State. [Supported by designations of Plaintiff's deposition of Jeanette O'Neill (#5); **Exhibit 4**, certified copy of records, Secretary of State.]

12. For purposes of managing the business of Doyle Road Apartments, LLC, Jeanette O'Neill handled leases and rents and paid bills; Matthew O'Neill handled construction and maintenance issues for the physical buildings. [Supported by designations of Plaintiff's depositions of Matt O'Neill (#32) and Jeanette O'Neill (#9).]

13. On May 5, 2008, Defendant MJO, LLC, conveyed to Defendant Doyle Road Apartments, LLC (whose mailing address was P.O. Box 1693, Lake Ozark, MO 65409, the same mailing address for MJO, LLC), a warranty deed for the earlier described tract of land that Defendant MJO, LLC, had acquired from B & L Veatch Properties, LLC. [**Exhibit 5**, a copy of the

recorded deed, certified by the Miller County Recorder's Office.]

14. P.O. Box 1693, Lake Ozark, Missouri 65409, was used by MJO, LLC, Doyle Road Apartments, LLC, and by Matt and Jeanette O'Neill for their personal mail. Either Matt or Jeanette O'Neill would pick up the mail from the post office box. Jeanette paid for the P.O. Box until she decided not to renew the rent for it in 2014. [Supported by designations of Plaintiff's depositions of Matt O'Neill (#33) and Jeanette O'Neill (## 4, 13, 14, 18).]

15. To the best of Matt O'Neill's recollection, MJO, LLC, had a contract with Doyle Road Apartments, LLC, to build a fourth apartment building, identified as 121 Doyle Road, on the property. [Supported by designation of Plaintiff's deposition of Matt O'Neill (#37).]

16. The contract included constructing a wastewater treatment system ("WWTF"), which was needed for the fourth apartment building. [Supported by designations of Plaintiff's depositions of Matt O'Neill (#37) and Jeanette O'Neill (#10).]

17. Matt O'Neill hired Kevin Rohrer to build the WWTF, and hired Schultz and Summers Engineering, Inc. ("SSE") to design it according to Department of Natural Resources specifications. [Supported by designations of Plaintiff's deposition of Matt O'Neill (## 30, 31).]

18. By letter dated July 2, 2008, SSE transmitted an application for a construction permit for a sanitary sewer system for "MJO Builders – Doyle

Road Apartments” to the Department of Natural Resources, together with a check for \$750.00. The Department received the application on July 7, 2008. [Exhibit 6].

19. According to the application (Form B), the facility name was MJO Builders Sewer System. The owner was identified as MJO Builders – Matt O’Neill. The physical address was 119 Doyle Road, Eldon, Missouri 65026, and the mailing address was P.O. Box 1693, Lake Ozark, MO 65049. The “owner” was identified on the form as the “continuing authority.” As provided in 10 CSR 20-6.010(30(A), applications for construction and operating permits “shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made.” [Exhibit 6.] For purposes of this rule, the Department verified that MJO, LLC, was registered as active and in good standing with Secretary of State.

20. The application was signed by Matt O’Neill – owner. [Exhibit 6.]

21. The \$750.00 application fee submitted with the construction permit application was paid by check drawn on an account for MJO, LLC, and the check was signed by Jeanette O’Neill. [Exhibit 7, copy of the check, certified by the bank.]

22. The Department dated and mailed a letter on October 20, 2008 to

Mr. Matt O'Neill, owner, MJO Builders, as "Applicant" to advise that the Department identified certain deficiencies in the application. The letter was sent to P.O. Box 1693, Lake Ozark MO 65049. The letter allowed 30 days for the applicant or the applicant's engineer to correct the deficiencies or request an extension of time. [Exhibit 8.]

23. By letter dated October 29, 2008, SSE, on behalf of MJO Builders Sewer System, responded to the Department's October 20, 2008 letter. The Department received SSE's letter on November 4, 2008. The letter shows that SSE sent a copy to "MJO Builders – Owner." [Exhibit 9.]

24. On December 5, 2008, the Department of Natural Resources posted a public notice that it had received an application for a Missouri State Operating Permit for MJO Builders Sewer System WWTF, showing the name and address of the owner as MJO Builders – Matt O'Neill, P.O. Box 1693, Lake Ozark, MO 65049. A copy of the public notice was mailed to Matt O'Neill, instructing him to post it at his place of business. Copies of the notice were also mailed to the county clerk for posting in the courthouse, and to the postmaster for posting at the Post Office. [Exhibit 10.] The Department received no comments.

25. On January 27, 2009, the Department of Natural Resources issued construction permit no. SWRO-2217, which was in effect for one year, to Matt O'Neill, MJO Builders, to build wastewater collection and treatment

facilities “to serve MJO Builders located on Doyle Road, Eldon.” The letter advised Matt O’Neill that an operating permit would be required for the facility to receive wastewater. [**Exhibit 11.**]

26. The Department issued the construction permit with a letter that advised Matt O’Neill that “[i]f you were affected by this decision, you may appeal to have the matter heard by the administrative hearing commission.” The letter provided instructions for appealing. A copy of the letter was sent to SSE. [**Exhibit 11.**] According to a Department witness, there was no appeal.

27. On March 23, 2009, Jeanette O’Neill, as registered agent for MJO Builders, LLC, filed with the Secretary of State an Application for Registration of a Foreign Limited Liability Company. The application included a Certificate of Existence with Status in Good Standing signed by the Secretary of State for the State of Nevada, where the company was registered on February 19, 2009. [Supported by designations of Plaintiff’s depositions of Matt O’Neill (#27) and Jeanette O’Neill (#3); **Exhibit 12**, certified copy of records on file with the Missouri Secretary of State.]

28. Jeanette O’Neill handled the paperwork for registering the company in both Nevada and Missouri. [Supported by designations of Plaintiff’s depositions of Matt O’Neill (#27) and Jeanette O’Neill (#3).]

29. Jeanette O’Neill made arrangements with a company called Nevada Corporation to form MJO Builders, LLC. Nevada Corporation

provided bookkeeping and tax preparation services for a fee. [Supported by designations of Plaintiff's depositions of Matt O'Neill (#27) and Jeanette O'Neill (#3).]

30. Jeanette and Matthew O'Neill had a record-keeping system of binders or folders for MJO, LLC and MJO Builders, LLC, and the system was organized by project, or by job, not by corporate entities. There was no practical distinction between MJO, LLC, MJO Builders, LLC, and Matt O'Neill. [Supported by designations of Plaintiff's deposition of Jeanette O'Neill (## 11, 15, 17).]

31. By a Deed of Trust dated June 19, 2009, Doyle Road Apartments, LLC, conveyed the real estate to a trustee as security for a promissory note. Jeanette O'Neill signed the deed as Chief Executive Manager of Doyle Road Apartments, LLC. [**Exhibit 13**, a copy of the recorded deed, certified by the Miller County Recorder's Office.]

32. By letter dated July 13, 2009 to Matt O'Neill, MJO Builders, the Department transmitted a Report of Construction Inspection of the wastewater facilities "to serve MJO Builders in Miller County, Missouri." The letter requested that Mr. O'Neill complete and submit an application for an operating permit, a filing fee of \$100.00, and a Statement of Work Completed signed by the project engineer. [**Exhibit 14**.]

33. By letter dated August 10, 2009, RE: Sanitary Sewer System for

MJO Builders – Doyle Road Apartments, SSE transmitted to the Department two copies of the following items: 1. the operating permit application, 2. the existing plan for the sanitary sewer system, 3. a USGS map, 4. statement of work. There letter did not mention the required \$100.00 fee. [Exhibit 15.]

34. The first page of the Form B (application for the operating permit) identified the facility as MJO Builders Sewer System, 119 Doyle Road, Eldon, Missouri 65026. The owner was identified as MJO Builders – Matt O’Neill, P.O. Box 1693, Lake Ozark, Missouri 65049. The facility contact was Matt O’Neill. At the end of the application form, the printed name of the signatory was MATT O’NEILL. But the application form was not signed. The Department received the letter and attachments on August 12, 2009. [Exhibit 15.]

35. By letter dated August 12, 2009 to the Department of Natural Resources, RE: Sanitary Sewer System for Doyle Road Apartments, LLC, SSE’s engineer advised that she had “inadvertently used the incorrect name on the application. The correct name for the operating permit should be Doyle Road Apartments, LLC with Jeanette O’Neill as the managing partner.” Enclosed with the letter was the corrected Form B application. The corrected Form B identified the facility as Doyle Road Apartments, LLC, 119 Doyle Road, Eldon, Missouri 65026. The owner was identified as Doyle Road Apartments, LLC, Jeanette O’Neill – Managing (next word unreadable), P.O.

Box 1693, Lake Ozark MO 65049. The facility contact was “Jeanette O’Neill, Managing Partner.” There was no mention of the required application fee of \$100.00. The Department received the letter and attachment on August 17, 2009. [Exhibit 16.]

36. In the signature block for the revised application, the printed name MATT O’NEILL was lined-out by hand, and handwritten in the same box was JEANETTE O’NEILL. There appeared a signature “JONeill”, with the notation, in handwriting: “AS Mgng MEMBER DOYLE ROAD APTS. LLC.” [Exhibit 16.]

37. Jeanette O’Neill has identified the handwriting as Matt O’Neill’s [Supported by designations of Plaintiff’s deposition of Jeanette O’Neill (#12).]

38. The Department received a check dated October 7, 2009, in the amount of \$100.00 in connection with the operating permit application. The name on the account was Doyle Road Apartments, LLC, and the check was signed by Jeanette O’Neill. On the memo line appeared the construction permit application no. SWRO-2217. [Exhibit 18.] According to a Department witness, the check apparently did not come with an application form, and it was not immediately associated with the existing permit file.

39. On October 13, 2009, SSE, by email to the Department of Natural Resources, SSE’s engineer enquired about the status of the Operating Permit for Doyle Road Apartments, since she had sent a check for \$100.00 a week

earlier. [Exhibit 17.]

40. On October 13, 2009, a Department employee entered a record of receiving the \$100.00 check on a document entitled “Fee Application Sheet for SWRO” and noted that it was for “MJO Builders,” crossing through the facility name “Doyle Road Apartments” on the record. [Exhibit 18.] According to a Department witness, the operating permit application was ready for review upon receipt of the fee.

41. On October 23, 2009, the Department issued Missouri State Operating Permit No. MO-0135631 to MJO Builders – Matt O’Neill. The Department used regular mail to deliver the operating permit with a letter addressed to MJO Builders – Mr. Matt O’Neill, P.O. Box 1693, Lake Ozark, MO 65049. [Exhibits 19 and 20.]

42. Jeanette O’Neill would have shown the letter and operating permit dated October 23, 2009 to Matt O’Neill, and he would have put it in the to-be-filed box. Once Matt O’Neill looked at it, he would make notes if he needed something changed, and Jeanette O’Neill would have filed it.

[Supported by designations of Plaintiff’s deposition of Jeanette O’Neill (##13, 15).]

43. Jeanette O’Neill likely placed the operating permit in a file.
[Supported by designation of Plaintiff’s deposition of Jeanette O’Neill (#15).]

44. The files are not available because Jeanette and Matt O’Neill

abandoned them by leaving them in the garage of their marital home when the bank foreclosed on the home in late 2012. [Supported by designations of Plaintiff's depositions of Matt O'Neill (#38) and Jeanette O'Neill (#16).]

45. A witness for the Department testified that the issuance of the operating permit to MJO Builders instead of to Doyle Road Apartments, LLC, was an error. The Department would have corrected the error, if either Matt or Jeanette O'Neill had notified the Department of the mistake, but the Department was not so notified.

46. The Department's letter that transmitted the operating permit advised MJO Builders – Mr. Matt O'Neill that "[i]f you were affected by this decision, you may appeal to have the matter heard by the administrative hearing commission." The letter provided instructions for appealing. A copy of the letter was sent to SSE. [**Exhibit 19.**] There was no appeal.

47. Pursuant to 10 CSR 20-6.010(11), MJO Builders and Matthew J. O'Neill could have transferred the operating permit to Doyle Road Apartments, LLC, and Jeanette O'Neill, but did not.

48. The operating permit allowed the WWTF to accept wastewater as of the date it was issued, October 23, 2009. The operating permit's expiration date was October 22, 2014. [**Exhibit 20.**]

49. The legal description for the WWTF, which is set forth in the operating permit, is NE ¼ of the SE ¼ of Sec. 26, T 42 N, R 15 W, in Miller

County, Missouri. [Exhibit 20.] This legal description is within the warranty deed held by Doyle Road Apartments, LLC. [Exhibit 5, a copy of the recorded deed, certified by the Miller County Recorder's Office.]

50. The operating permit allows effluent from the WWTF to discharge to an unnamed tributary to Blythes Creek, which, as reflected in the Statement of Basis for the operating permit [Exhibit 20, p. 8], is a classified stream (classification P). The stream's designated uses are livestock and wildlife watering (LWW) and supporting aquatic life (AQL). [See listing of Blythes Creek in the Clean Water Commission's water quality regulations at 10 CSR 20-7.031, Table H.]

51. The operating permit allows the WWTF to serve two apartment buildings. [Exhibit 20.]

52. The WWTF design includes non-standard technology, that is, the engineering design includes technology not addressed in the Clean Water Commission's regulations. For this reason, the operating permit included a schedule of compliance and requirements for assessing the effectiveness of the WWTF's new technology. The schedule of compliance required the permit holder, acting under the supervision of a professional engineer registered in Missouri, to collect and test samples of the WWTF effluent, measure flow, and record all maintenance and operational problems experienced during the first 34 months of operation. The schedule required the permit holder to

submit to the Department, within one year from the issuance of the permit, a preliminary engineering report, prepared by the professional engineer, evaluating the new technology for the first ten months of operation, and a final engineering report, prepared by the professional engineer, within three years of the permit issuance date. **[Exhibit 20, p. 5.]**

53. The purpose of requiring the engineering evaluations was to either confirm that the facility was operating effectively or, if it was not, to advise the Department of what would be done to either make it work or replace it. The Department never received the engineering reports required in the operating permit's schedule of compliance.

54. The operating permit included Standard Conditions Part III, Section K, as incorporated under Part B of the permit. Under this provision, the permit holder was required to submit to the Department by each January 28, a report regarding testing, removal and disposal of sludge from the facility during the previous calendar year. **[Exhibit 20, p. 2, Part B (Standard Conditions) and p. 25 – Section K of the Standard Conditions.]** No annual sludge reports were submitted to the Department as required.

55. The operating permit included certain conditions for monitoring the effluent from the facility through sampling and analysis. The operating permit required submittal of monthly discharge monitoring reports to the Department, beginning December 28, 2009. **[Exhibit 20, p. 2 Part A.]**

56. On or about January 1, 2010, Matt O'Neill moved to New York, and Jeanette later joined him there. She separated from Matt and returned from New York to live in Missouri in March of 2011. [Supported by designations of Plaintiff's deposition of Jeanette O'Neill (##19 and 22).]

57. In her deposition, Jeanette testified that the mail to P.O. Box 1693, Lake Ozark, Missouri 65049 was not forwarded to New York, but was forwarded to their home in Missouri, where a couple stayed. The persons using the home would let the O'Neills know what came in the mail. [Supported by designation of Plaintiff's deposition of Jeanette O'Neill (#4).]

58. Both Matt and Jeanette had the opportunity to see their mail when they returned to Missouri from New York for family reasons and holidays. [Supported by designation of Plaintiff's deposition of Jeanette O'Neill (#22).]

59. After Jeanette separated from Matt and moved back to Missouri to live in March of 2011, she continued to pick up mail that was delivered to P.O. Box 1693 and was addressed to Matt and MJO Builders. She would not open it herself, but would save it for his review when he would visit their children. [Supported by designation of Plaintiff's deposition of Jeanette O'Neill (#19).]

60. After the Department issued the operating permit on October 23, 2009, the permit holder missed every deadline for the submittal of monthly

discharge monitoring reports. The Department, as part of its standard procedures, mailed letters and notices to MJO Builders – Mr. Matt O’Neill, P.O. Box 1693, Lake Ozark, MO 65049 to advise that the Department had not received the required monthly discharge monitoring reports. [Exhibit 21.]

61. On March 10, 2011, a representative of the Department reviewed the compliance history and inspected the WWTF. The inspector could not contact a representative of the WWTF, and could locate no business office for the apartments. The inspector collected a sample of the effluent for laboratory analysis and took pictures.

62. On April 21, 2011, the Department mailed to Matt O’Neill, MJO Builders, at P.O. Box 1693, Lake Ozark, Missouri 65049, a written report of the March 10, 2011 inspection and a notice of violation, both of which noted the permit holder’s failure to file required reports and properly operate the WWTF. The report and notice of violation noted that the effluent failed to meet the permit limitations for pollutants, and caused pollution of the receiving stream. The report noted that there was no security fence around the facility as required by 10 CSR 20-8.020(11)(C)11. The inspector took pictures showing deposits of sludge in the bottom of the chlorination applicator, the dechlorination application tube, the outfall pipe, and the receiving stream.

63. Analysis of the effluent sample collected by the inspector indicated violation of the monthly average allowed by the permit for bio-oxygen demand (BOD). In the absence of a discharge monitoring report, the Department treats the sample collected during the inspection as the record of the monthly average. High BOD levels indicated a deprivation of oxygen available for aquatic life. The laboratory analysis also showed that violations of both the daily maximum and monthly average limits for ammonia. [Exhibit 22.]

64. The report noted that the Department had received no annual sludge report for calendar year 2010. The report also noted that the Department had not received the engineering evaluation of the new technology's performance during the first ten months of operation – a report that was due one year from the issuance of the permit. [Exhibit 22.]

65. The April 21, 2011 letter enclosed a schedule of compliance that outlined the required actions and deadlines to bring the WWTF into compliance, and invited Matt O'Neill to either return it with his signature, or request a meeting to negotiate a different schedule, within 30 calendar days of the date on the letter. [Exhibit 22.] The Department received no response to this request.

66. On July 7, 2011, the Department mailed a letter to Mr. O'Neill, offering to meet with him on July 21, 2011. [Exhibit 23.] There was no response to this letter.

67. After Jeanette O'Neill had moved from New York to relocate in Missouri in 2011, she asked Matt O'Neill to deal with the WWTF because, as far as she was concerned, Matt O'Neill was responsible for operating it and making sure it was working. Matt O'Neill made arrangements to meet with a representative from Total Water Laboratories, LLC, at the WWTF "and paying him, or ... arranging for the Doyle Road Apartments to pay him to in essence vacuum sludge from the system." [Supported by designations of Plaintiff's depositions of Matt O'Neill (##34, 35) and Jeanette O'Neill (##20, 21).]

68. On August 24, 2011, the Department inspector again reviewed the compliance history and conducted another inspection. He could not locate a representative for the WWTF. The inspector took pictures and also a sample of the effluent for analysis. Since the inspection in March, someone had added chlorination and dechlorination applications to the system, but no other actions had apparently been taken to correct the violations noted during the March 2011 inspection. In certain respects, the conditions observed had further deteriorated. [Exhibit 24.]

69. On September 16, 2011, mailed to Mr. O'Neill, P.O. Box 1693, Lake Ozark, Missouri 65049, the written report of the August 24, 2011 inspection and a notice of violation, noting that no required reports due by on or before August 24, 2011 had been received. The report notes that the WWTF was not being properly operated. **[Exhibit 24.]**

70. The September 16, 2011 report and notice of violation noted that the effluent failed to meet the permit limitations for pollutants; specifically, the BOD level was three times higher than the BOD violation recorded during the March inspection, and the measure of total suspended solids (TSS) was higher than the allowed monthly average. In addition, the inspector noted that the facility caused pollution of the receiving stream, in that there was sludge below the outfall pipe and a visual impact upon the receiving stream – cloudy discoloration shown in a photograph. The report noted that no blowers were operating, as required by regulation, which likely accounted for the lit warning light indicating that the system was overloaded. Because the blowers and aerators for the facility were not operating, the sewage was not being treated before it was discharged to the receiving stream. The facility was overgrown with vegetation, and there was still no security fence. **[Exhibit 24.]**

71. Other than the untimely submittal of discharge monitoring report for June of 2011 – a report that was not signed by the owner and

which showed a BOD reading of 60.65 mg/L, as well as an violation of the allowed monthly average for ammonia [**Exhibits 25, 31**], no other discharge monitoring reports for the WWTF were submitted until the First Bank of the Lake, Osage Beach, Missouri, began submitting them, beginning with the report for the month of December, 2012, and proceeding into 2015. [**Exhibit 27**].

72. In late 2011 and early 2012, the Department engaged Jeanette O'Neill in correspondence and by phone regarding the violations. In a letter dated December 13, 2011, Jeanette O'Neill committed to taking steps to correct the deficiencies, which she attributed to Matt O'Neill and MJO Builders, and was willing to accept transfer of the permit to Doyle Road Apartments, LLC. She stated that Doyle Road Apartments had a negative income and could not afford a penalty for violations [**Exhibit 26.**] She stated in a letter dated January 12, 2012, that she had no connection with the MJO Builders and no control over the chronic and serious negligence of MJO Builders. [**Exhibit 26.**]

73. In February of 2012, Jeanette O'Neill hired Waste Water Operation and Service, LLC, to evaluate the WWTF. The company removed sludge from the WWTF and submitted invoices, originally to Matt O'Neill, but corrected to indicate the recipient was Jeanette O'Neill, Doyle Road Apartments, P.O. Box 1693, Lake Ozark, Mo, in the total amount of \$2,327.00

[Supported by designations of Plaintiff's depositions of Matt O'Neill or Jeanette O'Neill.] [Exhibit 26.]

74. Due to lack of progress in achieving a formal resolution to the WWTF issues, the Department advised Jeanette O'Neill by letter dated March 13, 2012 that the Department would ask the Clean Water Commission to refer the case to the Attorney General to take further enforcement action. Jeanette O'Neill was invited to the Commission's May 2, 2012 meeting, when the matter was to be considered. The letter was sent by certified mail, return receipt requested to "Jeanette O'Neill, MJO Builders Sewer System, P.O. Box 1693, Lake Ozark, MO 65049." She did not pick it up, and the Postal Service returned it to the Department. A Department employee scanned the letter and sent it to Jeanette O'Neill to her known email address on April 6, 2012. [Exhibit 30.] Jeanette O'Neill did not attend the Commission's meeting.

75. The Department did not receive monthly discharge monitoring reports for the WWTF after communicating with Jeanette O'Neill, and the First Bank of the Lake DBA MJO Builders began sending them in January of 2013. [Exhibit 27.]

76. The Central Bank of Lake of the Ozarks, which held a Deed of Trust to secure a promissory note on the Doyle Road Apartments property [Exhibit 13, a copy of the recorded deed, certified by the Miller County Recorder's Office], appointed a Substitute Trustee on January 16, 2013.

[**Exhibit 28**, a copy of the recorded appointment, certified by the Miller County Recorder’s Office.] The Substitute Trustee sold the Doyle Road Apartments real estate to recover an unpaid note on February 15, 2013.

[**Exhibit 29**, a copy of the recorded document, certified by the Miller County Recorder’s Office.]

Conclusions of Law

77. This Court has jurisdiction over the subject matter and the parties in this case pursuant to the Missouri Clean Water Law, Chapter 644 RSMo, specifically, § 644.076.1 RSMo.

78. Venue is proper pursuant to § 644.076.1 RSMo because the WWTF is located in Miller County.

79. Section 644.076.1 RSMo provides that “it is unlawful for any person to cause or permit any discharge of any water contaminants from any water contaminant or point source located in Missouri in violation of sections 644.006 to 644.141, or any standard, rules, limitations or regulations promulgated pursuant thereto, or permits issued by ... the [Clean Water] Commission or the [Department] director.”

80. Section 644.051.1(1) RSMo makes it unlawful for any person “to cause pollution of waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state.”

81. A “person” is defined at § 644.016(15) RSMo as “any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties.”

82. MJO, LLC, MJO Builders, LLC, Matt O’Neill, Jeanette O’Neill and Doyle Road Apartments, LLC, are persons under § 644.016(15) RSMo.

83. A “water contaminant source” is defined at § 644.016(25) RSMo Supp. 2012 as “the point or points of discharge from a single tract of property on which is located any installation, operation or condition which includes any point source ... which causes or permits a water contaminant therefrom to enter waters of the state either directly or indirectly.”

84. A “point source” is defined at § 644.016(16) RSMo as “any discernible, confined and discrete conveyance, including by not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container ... from which pollutants are or may be discharged.”

85. The WWTF for Doyle Road Apartments is a “point source” and a “water contaminant source” as those terms are defined at § 644.016(16) and (25) RSMo.

86. The term “waters of the state” is defined at 644.016(27) RSMo as “all waters within the jurisdiction of this state, including all rivers, streams, lakes and other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common.”

87. Effluent from the WWTF discharges to an unnamed tributary to Blythes Creek, which is “waters of the state” as defined in § 644.016(27) RSMo.

88. The term “water contaminant” is defined in § 644.016(24) RSMo as “any particulate matter or solid matter or liquid or any gas or vapor or any combination thereof, or any temperature change which is in or enters any waters of the state either directly or indirectly by surface runoff, by sewer, by subsurface seepage or otherwise, which causes or would cause pollution upon entering waters of the state, or which violates or exceeds any of the standards, regulations or limitations set forth in sections 644.006 to 644.141 or any federal water pollution control act, or is included in the definition of pollutant in such federal act.”

89. The operating permit, at page 4, recites general criteria for water quality, as set forth in 10 CSR 20-7.031. For example, one provision under “Special Conditions” states, at ¶ 6(b)1, that “waters shall be free from

substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses.” Another prohibits unsightly color [¶ 6(b)(3)]. Conditions harmful to wildlife, livestock, and aquatic life are prohibited at ¶¶ 6(b)(4, 6, and 7). The pictures and sample results from inspections of the WWTF on March 10 and August 24, 2011, demonstrate violation of these permit conditions and the regulation.

90. Effluent from the WWTF for Doyle Road Apartments included water contaminants that violated or exceeded standards, regulations or limitations set forth in sections 644.006 to 644.141 RSMo on at least two occasions: March 10, 2011 and August 24, 2011, as verified by sampling collected by an inspector of the Department of Natural Resources.

91. “Pollution” is defined by § 644.016(17) RSMo as “such contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is reasonably certain to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, industrial agricultural, recreational, or other legitimate beneficial uses, or to wild animals, birds, fish or other aquatic life.”

92. The WWTF serving the Doyle Road Apartments caused pollution as defined by § 644.016(17) RSMo, based upon the visual impact on the receiving stream of the effluent, as observed and recorded by an inspector for the Department of Natural Resources on March 10, 2011 and August 24, 2011.

93. As a matter of public policy, Missouri courts give the preservation of public health the highest priority; accordingly, the traditional rule that a corporate officer, director, shareholder, or employee is not personally liable for the torts of the corporation does not apply in environmental cases. *State ex rel. Webster v. Missouri Resource Recovery, Inc.*, 825 S.W.2d 916 (Mo. App. S.D. 1992).

94. Missouri law recognizes that a joint venture is a species of partnership. *Johnson v. Pac. Intermountain Express Co.*, 662 S.W.2d 237, 241 (Mo. banc 1983). The distinction between a joint venture and a conventional partnership is that the former exists for a particular, defined purpose. *Id.* Although a joint venture is a consensual arrangement, no particular formalities are necessary. *Id.* There is a mutual agency among the venturers for activities within the scope of the venture, and all have equal right of control. *Id.* Joint venturers are jointly and severally liable for torts committed within the scope of the joint venture. *Id.* at 241-42. *Firestone v. VanHolt*, 186 S.W.3d 319, 324 (Mo. App. W.D. 2005).

95. Matt and Jeanette O’Neill, were engaged in a joint venture with each other and MJO, LLC, MJO Builders, LLC, and Doyle Road Apartments. They participated together in the business and management of these corporate entities. They had equal right and authority to control and maintain the WWTF, individually and as the decision makers for the companies, from the issuance of the operating permit on October 23, 2009 forward.

96. Matt O’Neill, individually and through MJO, LLC, built the WWTF for the benefit Doyle Road Apartments, LLC, (the owner of the property and improvements). The purpose of Doyle Road Apartments, LLC, was to provide employment for Jeanette O’Neill. Jeanette had authority to represent MJO, LLC. She wrote checks for MJO Builders, particularly the check for the construction permit fee related to the WWTF. She registered MJO Builders, LLC, in both Nevada and Missouri and was that company’s registered agent. MJO Builders, LLC was formed for purposes of filing taxes and securing other business services from Nevada Corporation for all MJO, LLC, MJO Builders, LLC, and Doyle Road Apartments, LLC. For purposes of improving the Doyle Road Apartments property, there was no practical distinction between MJO, LLC, and MJO Builders, LLC.

97. After the WWTF was built, the Department issued to “MJO Builders – Matt O’Neill” the operating permit as the continuing authority for

operation, maintenance and modernization of the WWTF. While the Department issued the operating permit in error, in that the revised permit application listed Doyle Road Apartments, LLC, as the owner and Jeanette O'Neill as the facility contact, MJO Builders and Matt O'Neill continued to have the lawful authority to operate the facility, from the Department's perspective, given that the error was not brought to the Department's attention.

98. Jeanette O'Neill apparently shared the Department's perspective that Matt and MJO Builders had responsibility for the WWTF, based upon her deposition testimony and her correspondence with the Department in late 2011 and early 2012. Certainly Doyle Road Apartments, LLC, the WWTF owner, had the power to grant that authority through Jeanette O'Neill as the sole and managing member of Doyle Road Apartments, LLC.

99. But granting authority to maintain the WWTF to MJO Builders and Matt O'Neill did not relieve Doyle Road Apartments, LLC, as the WWTF owner, of authority and responsibility to operate and maintain the facility in compliance with the law. As owner, Doyle Road Apartments, LLC, remained liable for violating § 644.051.1(1), which provides that it is unlawful for any person "to cause pollution of waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state." Doyle Road Apartments,

LLC, contracted with MJO Builders to construct the WWTF, and Doyle Road Apartments owned it. The WWTF is a “point source” and a “water contaminant source,” as those terms are defined in § 644.016 RSMo. The WWTF placed, caused or permitted to be placed contaminants in a location where they were likely to cause, and did cause, pollution of waters of the state. Because Jeanette O’Neill was the sole and managing member of the Doyle Road Apartments, LLC, she bears liability for failing to take appropriate steps to prevent the pollution of the receiving stream by the WWTF’s discharge of effluent and sludge that violated the permit.

100. The existence of their joint venture is supported by the evidence that Matt and Jeanette O’Neill and their LLCs shared a single post office box. In her work for MJO Builders, Jeanette had authority to collect and open the mail from the Department and to take appropriate action to address any concerns raised by the Department related to the Doyle Road Apartments WWTF. She was not prevented from bringing those concerns to Matt O’Neill’s attention, and she did, at some point.

101. Matt O’Neill and MJO, LLC d/b/a MJO Builders and MJO Builders, LLC, were indistinguishable as the *de facto* holders of both the construction permit and the operating permit for the WWTF. Doyle Road Apartments, LLC, and Jeanette O’Neill were indistinguishable as the successors to Matt O’Neill and MJO, LLC d/b/a MJO Builders and MJO

Builders, LLC, as owners of the apartment business and benefactors of the rental income.

102. Both Matt and Jeanette O'Neill had the opportunity to read the operating permit and to act upon its requirements, as well as respond to the letters and inspection reports that the Department mailed to P.O. Box 1693, Lake Ozark, MO 65049 in relation to the WWTF. In failing to inform themselves of the obligations imposed by the permit and failed to operate, maintain and modernize the WWTF as the law required, their noncompliance was also the noncompliance of MJO, LLC, MJO Builders, LLC, and Doyle Road Apartments, LLC.

103. The construction and operation of the WWTF was necessary to the particular, defined purpose of a joint venture between all defendants to provide sewer service to Doyle Road Apartments, which provided employment for Jeanette O'Neill while caring for the children born of her marriage with Matt O'Neill, and income to support their family.

104. Matt and Jeanette O'Neill shared authority for the WWTF, notwithstanding the fact that neither wanted the responsibility for it. Each blamed the other for the WWTF's deficiencies, but they had equal authority and opportunity to ensure that it complied with the law.

105. The failure of the defendants to operate the WWTF for Doyle Road Apartments in compliance with the operating permit issued under the

Missouri Clean Water Law and implementing regulations resulted in contaminants entering waters of the state and causing pollution.

106. For each violation of the Missouri Clean Water Law, § 644.076.1 RSMo authorizes the Court to assess a penalty “not to exceed \$10,000 per day for each day, or part thereof, the violation occurred or continues to occur.”

107. Reading the statute literally, every failure to submit a complete monthly discharge monitoring report when it was due (the 28th of each month, for the preceding month), as required by the permit, is a separate violation for which the Court may assess a daily penalty until the report is submitted.

108. Reading the statute literally, every failure to submit an annual sludge report when it was due (Jan. 28, for the preceding calendar year), as required by the permit, is a separate violation for which the Court may assess a daily penalty until the report is submitted.

109. Reading the statute literally, every failure to submit an engineering report when it was due (preliminary evaluation due October 22, 2010; final evaluation due October 22, 2012), as required by the permit, is a separate violation for which the Court may assess a daily penalty until the reports are filed.

110. Every recorded discharge of effluent that failed to meet the limitations of the operating permit is a violation for which the Court may

assess penalties.

111. Every day that pollution of the receiving stream was observed by the Department is a violation for which the Court may assess daily penalties, and it would be reasonable for the Court to rule that the pollution continued, in the absence of any evidence that it was abated, while Defendants had control of the WWTF.

112. The absence of a security fence may be treated as a continuing, daily violation that lasted from the commencement of operation on October 23, 2009, through at least August 24, 2011, the date of the last inspection while Defendants had control of the WWTF before the bank foreclosed and assumed operations in November of 2012. It would be reasonable to assess a penalty up to at least that date, even though there is no evidence that the Defendants ever installed a fence while they managed (or failed to manage) the facility.

The Court hereby adjudges, decrees and orders:

A. The Court finds that Jeanette O'Neill (now Jeanette Zaroor) and Doyle Road Apartments, LLC, are liable for violating the Missouri Clean Water Law, the regulations of the Clean Water Commission, and Missouri State Operating Permit No. MO-0135631 in the operation of the WWTF for the Doyle Road Apartments in Eldon, Missouri, from October 23, 2009 until a lender assumed operations in November of 2012.

B. The Court, pursuant to § 644.076.1 RSMo, hereby assesses a penalty of \$10,000.00 against Defendant Doyle Road Apartments, LLC, and orders Doyle Road Apartments, LLC, to pay a civil penalty in the amount of \$10,000.00 within thirty days of this Judgment by check made payable to the “*State of Missouri (Miller County)*” and mailed to:

Collections Specialist
Missouri Attorney General Office
P.O. Box 899
Jefferson City, MO 65102-0889

Execution for said sum shall issue immediately.

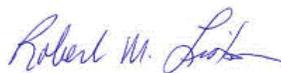
C. The Court, pursuant to § 644.076.1 RSMo, hereby assesses a penalty of \$10,000.00 against Defendant Jeanette O’Neill (now Jeanette Zaroor) and orders her to pay a civil penalty in the amount of \$10,000.00 within thirty days of this Judgment by check made payable to the “*State of Missouri (Miller County)*” and mailed to:

Collections Specialist
Missouri Attorney General Office
P.O. Box 899
Jefferson City, MO 65102-0889

Execution for said sum shall issue immediately.

D. The Court orders Jeanette O’Neill (now Jeanette Zaroor) to pay the court costs in this action.

January 27th, 2016
Date



Robert M. Liston
Circuit Judge