

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES Water Protection Program

In the Matter of:)	
)	
Lazy Acres Subdivision)	
Wastewater Treatment Facility)	Order No. 2015-WPCB-1386
)	
Serve:)	
Leslie Orf,)	
KDC Properties, L.L.C)	

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1386, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because KDC Properties, LLC (Respondent) violated the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the MCWL Section 644.076.1, RSMo. Litigation may occur without further administrative notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Respondents of liability for, or preclude the department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

FINDINGS OF FACT

1. The Respondent is an active Limited Liability Company registered with the Missouri Secretary of State. The Articles of Organization filed on October 23, 2002, lists Mr. Leslie Orf, Mr. Billy Orf, and Mr. Mark Long as the Organizers of the company.

2. Lazy Acres Homeowners Association is a nonprofit corporation in good standing and registered with the Missouri Secretary State. The 2015-2016 Annual Registration Report filed with the Missouri Secretary of State on July 8, 2015, lists Mr. Leslie Orf as the President, Mr. Mark Long as the Secretary and Mr. Billy Orf as the Treasurer.

3. The Respondent owns and operates a wastewater treatment facility (WWTF) which is located in the SE ¼, NE ¼, Section 11, Township 52 North, Range 3 West, of Pike County, Missouri. Wastewater generated by homes in the Lazy Acres Subdivision is treated by a Septic Tank Effluent Pump and Septic Tank Effluent Gravity collection system and 15,000 gallon fiberglass recirculation tank with three AdvanTex AX 100 modular pods, and with sludge removal by a contract hauler. The subdivision is located at the intersection of ighway 161 and county road 314, Bowling Greene, Missouri and currently consists of 18 homes. The WWTF has a design flow of 10,000 gallons per day and an actual flow of 1,700 gallons per day with a design population equivalent of 99.9. Design sludge production is 2.8 dry tons per year. The WWTF currently operates pursuant to the terms and conditions of Missouri State Operating Permit (MSOP) No. MO-0129984.

4. MSOP No. MO-0129984 was issued to the Respondent on July 2, 2010, and expired by its own terms on July 1, 2015. Mr. Orf, on behalf of the company, submitted a renewal application to the department on January 12, 2015. The MSOP authorizes the

Respondent to discharge treated effluent from the Outfall No. 001 to a tributary to West Sulphur Creek in accordance with the effluent limitations and monitoring requirements set forth in the MSOP.

5. MSOP No. MO-0129984 requires the Respondent to sample the effluent discharged from the outfall and chemically analyze the effluent sample for the water contaminants listed in Part "A" once per quarter. MSOP No. MO-0129984 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 quarterly Discharge Monitoring Reports (DMRs) by the 28th day of the month following the reporting period.

6. MSOP No. MO-0129984 contained a Schedule of Compliance (SOC) that required the Respondent to achieve compliance with final permitted effluent limitations for Ammonia as Nitrogen (N) by July 2, 2013.

7. If necessary the MSOP No. MO-0129984 required the Respondents to submit engineering plans, engineering specifications, and a construction permit application to the department by July 2, 2011, for improvements to the WWTF that will enable the effluent to comply with final effluent limitations for Ammonia as N. MSOP No. MO-0129984 required the Respondent to submit interim progress reports of construction upgrades to the department every 12 months from July 2, 2010.

8. If the Respondent determined that modifications to the WWTF were not needed to achieve compliance with the final permitted effluent limitations for Ammonia as N, MSOP No. MO-0128884 required the Respondent to submit a letter to the department by July 2, 2011,

stating that modifications are not needed to comply with final permitted effluent limitations for Ammonia as N.

9. MSOP No. MO-0129984 requires the Respondent to submit an annual sludge report to the department by January 28th of each year for the previous calendar year period. The department has not received the annual sludge report for 2014.

10. Quarterly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with the applicable permitted effluent limitations for Ammonia as N during the third and fourth quarters of 2013; the first, third and fourth quarters of 2014; and the first, second and third quarters of 2015.

11. Quarterly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with the applicable permitted effluent limitations for Biochemical Oxygen Demand during the month of first quarter of 2015.

12. The Respondent failed to submit a DMR for the second quarter of 2014.

13. On May 5, 2015, department staff conducted a routine compliance inspection of the WWTF. During the inspection, staff documented that the perimeter fence was inadequate and could allow unauthorized access to the WWTF. The WWTF was discharging during the inspection and staff collected samples. Chemical analysis indicated Ammonia as N of 26 mg/L, which exceeded the daily maximum of 12.1 mg/L and would exceed the monthly average of 4.6 mg/L. Department staff noted the discharge had a strong sulfuric odor and was light brown in color. Staff observed sludge in the receiving stream downstream of the outfall.

14. On May 28, 2015, the department issued the Respondent Notice of Violation (NOV) No. NER2015052115575742 for violations observed during the May 5, 2015, inspection.

The inspection report that accompanied the NOV required the Respondent to coordinate with the Compliance and Enforcement Section to resolve the violations.

15. Section 644.076.1, RSMo makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes penalties up to \$10,0000.00 per day per violation.

STATEMENT OF VIOLATIONS

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

16. Failed to comply with the effluent limits contained in Part "A" of MSOP No. MO-0129984, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

17. Failed to upgrade the WWTF to comply with final effluent limits as required in Part "B" Standard Conditions, and Part "D", SOC of MSOP No. MO-0129984 in violation of Sections 644.076.1 RSMo, and 10 CSR 20-6.010(7)(A).

18. Caused pollution of the tributary to West Sulphur Creek, waters of the state, or placed or caused or permitted to be placed water contaminants in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

19. Discharged water contaminants into waters of the state, which reduced the quality of such water below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.31 or applicable subsections of 10 CSR 20-7.031.

20. Failed to operate the WWTF so that there is no discharge of sludge to waters of the state as required by the standard conditions of MSOP No. MO-0129984, in violation of Section 644.076.1, RSMo.

21. Failed to submit annual sludge reports for 2014 as required by the Standard Conditions in MSOP No. MO-0129984, in violation of Section 644.076.1, RSMo.

22. Failed to submit quarterly DMRs as required in Part "A" of MSOP No. MO-0129984, in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(D)1.

23. Failed to provide adequate fencing and a lockable gate to prevent unauthorized access, in violation of 10 CSR 20-8.020(11) (C) 11.A & F.

AGREEMENT

24. The department and the Respondent desires to amicably resolve all claims that may be brought against the Respondent 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 of the Respondent under this AOC.

26. The Respondent 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 \$8,609.00. The department and the Respondent agrees that \$6,109.00 of the civil penalty shall be suspended on the condition the city complies with all requirements and conditions contained in this AOC. The payment in the amount of \$2,500.00 shall be in the form of a check made payable to the "Pike County Treasurer, as custodian of the Pike County

School Fund” and is due and payable upon execution of this AOC by the Respondent. The check and the signed copy of this AOC shall be delivered to:

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

27. The suspended penalty described in Paragraph 26 in the amount of \$6,109.00 shall be suspended for a period of two years from the execution of this AOC upon the condition that the Respondent does not violate the terms of the AOC. Upon the determination that the Respondent has failed to meet the terms of this AOC, including the requirements of Paragraphs 28 through 38, the department shall send a written demand for the suspended penalty to the Respondent. The Respondent shall have 15 days from the receipt of the written demand to submit the suspended penalty to the address listed in Paragraph 26.

28. In the period of time from the effective date of this AOC until the new or upgraded WWTF is completed, the Respondent agrees and is ordered to operate and maintain the existing WWTF at all times in compliance with the conditions and requirements of MSOP No. MO-0129984. All units or components of the existing WWTF shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the WWTF.

29. Until upgrades or improvements to the WWTF have been completed to bring the WWTF into compliance with the MCWL, the Respondent agrees and is ordered to cease connecting any additional dwellings or structures to the existing wastewater treatment system.

30. In the event the discharge of wastewater from the WWTF does not comply with its permitted effluent limitations, the Respondent agrees and is ordered to prevent a discharge of

wastewater by pumping and hauling the wastewater from the WWTF to a permitted WWTF with the capacity to treat the wastewater. The Respondent agrees and is ordered to continue pumping and hauling wastewater as necessary, to prevent any discharge of effluent that is not in compliance with its permitted limitations until such a time until the new or upgraded WWTF is completed. The Respondent agrees and is ordered to maintain pumping and hauling receipts and submit copies of the receipts to the department each month. The records shall be submitted to the department by the 10th day of the following month and include the date the wastewater was pumped; number of gallons pumped; and the name of the wastewater hauler and the name of the permitted WWTF accepting the wastewater.

31. Within 15 days of the effective date of this Order, the Respondent agrees and is ordered to submit complete and accurate annual sludge reports to the department for the 2014 calendar year and shall submit complete and timely annual sludge reports by January 28th of each year for the previous calendar year(s).

32. Within 45 days of the effective date of this Order, the Respondent agrees and is ordered to submit to the department for review and approval an engineering report prepared by a professional engineer licensed to practice in the state of Missouri evaluating the WWTF and its ability to comply with the applicable effluent limitations. The engineering report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8.020 and include a comprehensive evaluation of the current condition of the WWTF, wastewater treatment options, and recommendations that will enable the effluent to comply with the permitted effluent limitations contained in MSOP No. MO-0129984. If applicable, the Respondent agrees and is ordered to submit a complete antidegradation submittal pursuant to the Missouri Antidegradation

Rule and Implementation Procedure. 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 based on the U.S. Environmental Protection Agency's 2013 Final Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater.

33. Within 15 days of receipt of department comments on the engineering report, the Respondent agrees and is ordered to respond in writing to the department addressing all department comments on the engineering report to the department's satisfaction

34. If the department approved alternative is to upgrade or replace the WWTF, the Respondent agrees and is ordered to submit to the department for review and approval, a complete application for a construction permit, plans, and specifications sealed by a professional engineer licensed to practice in the state of Missouri and the applicable permit fee for the improvements recommended in the department approved engineering report. The plans and specifications shall be developed in accordance with 10 CSR 20-8. The Respondent agrees and is ordered to submit the complete application for a construction permit and applicable supporting documents to the department within 45 days of the date the department approves the engineering report.

35. If the department approved alternative is connection to an area-wide wastewater treatment and collection system, the Respondents agrees and is ordered to complete construction of a sewer extension by 365 days of the department's approval to connect to an area-wide wastewater treatment and collection system. The sewer extension shall be designed and sealed by a professional engineer registered in the state of Missouri in accordance with 10 CSR 20 Chapter 8 and shall be constructed in accordance with the registered professional engineer's

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

36. If the existing WWTF will be abandoned, the Respondent agrees and is ordered to submit a closure plan for department approval within 60 days of the date the department issues a construction permit or the date the department sends a letter informing the Respondent to proceed with connection to an area-wide wastewater treatment and collection system. If the existing WWTF will be incorporated in the new department approved wastewater treatment system, a closure plan will not be required.

37. Within 15 days of receipt of department comments on the closure plan, the Respondent agrees and is ordered to respond in writing to the department addressing all department comments on the construction permit application, plans and specifications to the department's satisfaction.

38. Within 180 days of the date the department issues a construction permit or the date the department sends a letter informing the Respondent to proceed with connection to an

area-wide wastewater treatment and collection system, the Respondent agrees and is ordered to:

- i) complete construction pursuant to the plans and specifications sealed a professional engineer licensed to practice in the state of Missouri and submitted to the department; and ii) achieve compliance with all applicable permitted effluent limitations or divert the wastewater flow from the mobile home park to the area-wide sewer system.

39. Within 15 days of completing construction, the Respondent 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 was completed in accordance with department approved plans and specifications and if applicable, a complete application for the modified MSOP, including applicable fee.

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

SUBMISSIONS

41. 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

42. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent 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 Respondent 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 Respondent's right to request an extension and may be grounds for the department to deny the extension.

43. Should the Respondent fail to meet the terms of this AOC, including the deadlines for completion of corrective actions set out in Paragraphs 28 through 40, the Respondent shall be subject 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 check made payable to "Pike County Treasurer, as custodian of the Pike 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

44. 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.

45. Nothing in this AOC forgives the Respondent 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.

46. 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.

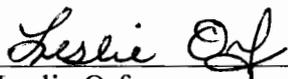
47. The effective date of the AOC shall be the date the department signs the AOC. The department shall send a fully executed copy of this AOC to the Respondent for their records.

NOTICE OF APPEAL RIGHTS

48. By signing this AOC, the Respondent 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.

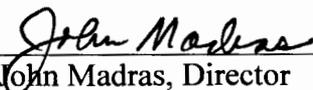
SIGNATURE AUTHORITY

Agreed to and Ordered this 21 day of April, 2016



Leslie Orf
KDC Properties, LLC
Lazy Acres Homeowners Association

Agreed to and Ordered this 13~~th~~ day of May, 2016



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

Copies of the foregoing served by certified mail to:

Mr. Leslie Orf
KDC Properties, LLC
Lazy Acres Homeowners Association
15181 Pike 313
Bowling Greene, MO 63334

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