

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

RECEIVED

APR 08 2016

Water Protection Program

**IN THE MATTER OF:**

Setter's Knoll Plats 3, 4, and 5

**SERVE:**

Martin Builders, Inc.

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) No. 2016-WPCB-1400  
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**ABATEMENT ORDER ON CONSENT**

**I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuing of this Abatement Order on Consent (AOC) No. 2016-WPCB-1400, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Martin Builders, Inc. 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 Martin Builders, Inc. 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.

**II. FINDINGS OF FACT**

- A. Martin Builders, Inc., and is developing property, known as the Setter's Knoll Plats 3, 4, and 5 which is approximately 23.26 acres in size, located at SW ¼, SE ¼, SW ¼ of Section 11, Township 46 North, Range 12 West in Boone County, Missouri. The company is developing the site (including Plats 1 and 2) to include 46 residential and two commercial lots pursuant to Missouri State Operating Permit (MSOP) No. MO-RA00445, which authorize land disturbance activities. Stormwater discharges from this site to a tributary to Fowler Creek and a tributary to Nichol's Creek.
- B. Requirements of an MSOP for land disturbance include, but are not limited to, the development of a Stormwater Pollution Prevention Plan (SWPPP), the

implementation of appropriate Best Management Practices (BMPs) throughout the site to prevent sediment from eroding offsite and entering waters of the state, and site inspections. The MSOP requires that the site inspections be conducted at least once per seven calendar days and following a rainfall event which causes stormwater runoff to occur on-site within 48 hours after the rain event has ceased during a normal work day and within 72 hours if the rain event ceases during a non-work day such as a weekend or holiday.

- C. Fowler Creek, Nichol's Creek, and their tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- D. Sediment is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- E. On December 19, 2013, department staff conducted a routine compliance inspection of the site. During the inspection, staff met with the company and requested to review the company's SWPPP and weekly inspection reports for the site; however, the company could only provide a draft SWPPP and a log documenting when the sediment basins were built and when sediment fences were installed. During the inspection, staff observed the following conditions:
  - 1. Sediment in the street along the curbs and in some areas covering the curbs.
  - 2. Erosion gullies on the northern sediment basin.
  - 3. No BMPs implemented between the disturbed areas and the neighboring property to the south.
  - 4. Sediment pile exposed and saturated soil without any BMPs.
  - 5. Sediment fence along the road was in disrepair and no longer functional.
  - 6. Sediment covering the gravel at the end of the unfinished subdivision road on western side of the site.
  - 7. Sediment accumulation and cloudy brown water, flowing from the site, in the road ditch along Highway Y.
- F. In addition staff observed sediment and cloudy brown water below the pipe on the opposite side of Highway Y. Staff collected a sample of the water flowing from the pipe and analysis of the water showed Settleable Solids (SS) of 14.5 milliliter per liter per hour (ml/L/hr) which exceeded the permit limits of 2.5 ml/L/hr.
- G. On January 14, 2014, the department issued Notice of Violation (NOV) No. 2013122610583948 to the company for violations observed on December 19, 2013. As part of the NOV the department required the company to submit a written report by February 4, 2104, describing the actions implemented to correct the violations and actions that will be taken to prevent a reoccurrence of the violations.
- H. On March 24, 2014, the department received a response from the company to the January 14, 2014, NOV. The company state they had placed straw bales at the storm inlets and in the drainage ditch, add riprap at the end of pipe at the northeast sediment basin, and had posted a public notice sign. The response also stated that

the company would be replacing sediment fence, reseeding disturbed areas, and cleaning the street periodically where sediment is found.

- I. On June 10, 2014, department staff conducted a routine compliance inspection of the site. During the inspection, staff observed the following conditions:
  1. Sediment accumulation in the road and the lack of BMPs around the individual construction sites.
  2. Sediment accumulation around the straw bales placed on the sides of the storm drains, sediment trails indicating that sediment had flowed around the bales and into the drains, and sediment accumulation on top of a drain which appeared to have flowed into the drain.
  3. Water flowing over a downed silt fence on the southwestern side of the site. Staff traced the origin of the water back to the second sediment basin. Staff observed this basin overflowing into a large erosion channel.
  4. Downed and partially downed silt fences along the entire western side of the site and sediment on the completed roadway.
  
- J. On June 24, 2014, the department issued NOV No. 2014061311074002 to the company for violations observed during the June 10, 2014, inspection. The inspection report accompanied by NOV required the company to submit a written report to the department by July 15, 2014, describing actions implemented to correct the violations and actions will be taken to prevent a reoccurrence of the violations. The NOV also informed the company that the case was being referred to the Compliance and Enforcement Section for further enforcement actions.
  
- K. On July 2, 2014, the department received a response from the company to the June 24, 2014, NOV. The company stated they had installed silt fences, installed large riprap around the detention basin on the northeast side of plat 3, installed straw bales in the ditch on the southeast of plat 3 and adjacent to Route Y. The company also included copies of the weekly log of site inspections and photographs of the BMPs.
  
- L. On October 6, 2014, staff conducted an investigation of the site after receiving an environmental concern reported to the department. During the investigation, staff observed the following conditions:
  1. Sediment accumulation on both sides of the old straw bales surrounding the drain inlets adjacent to the northern sediment basin.
  2. Track out of sediment in the roadway in Plats 3 and 4.
  3. There were no BMPs installed at the intersection of Silver Snipe Drive and Quail Ridge Road and track out of sediment on an unfinished section of Quail Ridge Road.
  4. Sediment accumulation below the outfall of the northern sediment basin.
  5. Discharge from the sediment basin on the southwestern side of the site had scoured an area and removed some vegetation on the western side of Plat 3 and erosion gullies around five feet in depth along the berms of the sediment basin
  6. No BMPs in the disturbed areas on the western end of Plat 5.

7. Sediment deposits in the road ditch on the southern side of the site boarding Highway Y.
  8. The stormwater inlets were full of sediment.
- M. On October 9, 2014, staff contacted the company and requested copies of the site inspection reports and an updated SWPPP. The company told staff that they would send copies of the reports and the SWPPP.
- N. On October 17, 2014, staff received copies of the site inspection reports. Staff reviewed the inspection reports and compared the reports with rainfall data obtained from the National Oceanic and Atmospheric Administration (NOAA) and found that the company failed to conduct post-rain event inspections on 12 occasions since June 2014. Staff also determined that the company failed to report information about their BMPs and site conditions on 8 post-rain event inspection reports during this same timeframe as required by (permit condition?).
- O. On October 27, 2014, the department issued the company NOV No. 2014101609343444 for violations observed on October 6, 2014. The inspection report associated with the NOV required the company to submit to the department a written report to the department describing actions implemented to correct the violations and actions that will be taken to prevent a reoccurrence of the violations. The department received a response from the company prior to the NOV on October 17, 2014; however, this response did not address all the violations listed in the NOV.
- P. On July 9, 2015, staff conducted a routine compliance inspection of the site. During the inspection, staff observed the following conditions:
1. No BMPs the western side of site.
  2. Ongoing land disturbance on the western side of Old Ridge Road which resulted in light colored sediment deposits in the bottom of the drainage, and in the receiving stream.
  3. No BMPs around a road outlet constructed for the road inlets on western side of the site or for the disturbance activities on Lot No. 83.
  4. Incorrectly installed sediment fence on the southern side of Plat 3.
  5. Significant erosion around a straw bale BMP located in the drainage along Route Y.
  6. No public notice sign posted at the entrance to the site.
- Q. On July 29, 2015, the department issued NOV No. 2015072415305580 to the company a NOV for violations observed on July 9, 2015. The inspection report associated with the NOV required the company to submit to the department a written report describing actions implemented to correct the violations of and actions that will be taken to prevent a reoccurrence of the violations.
- R. On August 19, 2015 the department received a response to the July 29, 2015, NOV from the company, which included descriptions and pictures of newly installed BMPs. The response also included a copy of the company's SWPPP, which had not been updated December 20, 2013.

- S. On October 26, 2015, the department received, from the company, an Erosion Control Status Report evaluating the site and making recommendations for improvements for soil erosion control.
- T. MCWL and Section 644.096, RSMo, authorize the state, or any political subdivision or agency to recover actual damages, including costs and expenses necessary to establish or collect any sums under Sections 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the state to their condition as they existed before violation, sustained by it because of any violation.
- U. The department conducted a routine compliance inspection on December 19, 2013, follow up inspections on June 10, 2014 and October 6, 2014, and an environmental concern investigation on July 9, 2015. In doing so, the department incurred costs and expenses, including but not limited to travel expenses. These costs incurred by the department total \$1,306.09.
- V. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to \$10,000.00 per day per violation.

### III. CITATIONS AND CONCLUSIONS OF LAW

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

1. Caused pollution of a tributary to Nichol's Creek, waters of the state, or placed or caused or permitted to be placed a water contaminant 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.
2. Failed to comply with the effluent limits contained in Part "E" of MSOP No. MO-MORA0045, in violations of Sections 644.051.1(3) and 644.076.1, RSMo.
3. Failed to install and maintain BMPs for erosion and sediment control as required by Part "C" Requirements 3 of MSOP No. MO-MORA0045, in violation of Section 644.076.1, RSMo.
4. Failed to conduct roadway and curb inlet cleanings weekly or following a rainfall that generates a run-off as required by Part "C" Requirements 3 of MSOP No. MO-RA0045, in violation of Section 644.076.1, RSMo.
5. Failed to generate, retain, and make available weekly and after rainfall event site inspections reports as required by Part "C" Requirements 10 of MSOP No. MO-RA0045, in violation of Section 644.076.1, RSMo.
6. Failed to amend and update the SWPPP during the term of the land disturbance activity to reflect change in design, operation, maintenance of BMPs, and/or the

current conditions of the site as required by Part "C" Requirements 8 of MSOP No. MO-MORA0045, in violation of Section 644.076.1, RSMo.

IV. AGREEMENT

- A. The department and the company desire to amicably resolve all claims that may be brought against the company for violations alleged above in Section III, Citations and Conclusions of Law, without the company admitting to the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the 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 company under this AOC.
- C. The company, in compromise and satisfaction of the department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of \$25,000.00. The department and the company further agree that \$12,500.00 shall be suspended as described in Paragraph D below. The payment of the civil penalty in the amount of \$12,500.00 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 company. 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 65102-477
- D. The suspended penalty described in Paragraph C in the amount of \$12,500.00 shall be suspended for a period of two years from the execution of this AOC upon the condition that the company does not violate the terms of the AOC, the MCWL, or the requirements of MSOP No. MO-RA00445. Upon determination that the company has failed to meet the terms of this AOC, including the requirements of Paragraphs F through I the department shall send a written demand for the suspended penalty to the company. The company shall have 15 days from receipt of written demand to submit the suspended penalty to the address listed in Paragraph C.
- E. The company agrees and is ordered to pay the state's investigative costs in the amount of \$1,306.09 in the form of a check made payable to the "State of Missouri." The check in the amount of \$1,306.09 is due and payable upon execution of the AOC by the company. The check shall be delivered to:

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

- F. Within five days of the effective date of this AOC the company agrees and is ordered to complete the following: i) implement and maintain appropriate and adequate BMPs throughout the site; ii) update and implement the SWPPP for the Martin Builders, Inc. site; and iii) maintain the site within the requirements and conditions of MSOP No. MO-RA00445 until the MSOP is terminated to prevent sediment from discharging off-site or into waters of the state.
- G. The company agrees and is ordered to conduct regularly scheduled inspections of all the erosion and sediment control structures at least once per seven days, or within 48 hours after a rain event has ceased, or within 72 hours if the rain event ceases during a non-work day such as a weekend or holiday, as stated by Requirement Number 10 in the MSOP, until the site is permanently stabilized with perennial vegetation with 70 percent plant density, pavement, buildings, or structures using permanent materials cover all areas that have been disturbed and MSOP No. MO-RA00445 has been terminated.
- H. The company agrees and is ordered to maintain inspection reports and a current copy of the SWPPP at the site during normal working hours and to comply with all conditions and requirements, including but not limited to maintenance and monitoring requirements contained in MSOP No. MO-RA00445 until MSOP No. MO-RA00445 is terminated.
- I. Within 30 days of the effective date of this AOC, the company agrees to submit to the department, for review an updated SWPPP and report with color photographs, detailing improvements made to the site and evidence of proper BMP installation and maintenance. The SWPPP shall include all BMPs at the site including the erosion control measures recommended in the Erosion Control Status Report from Paragraph I above.
- J. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the company 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 company shall submit to the department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The department may grant an extension if it deems appropriate. Failure to submit a written notice to the department may constitute a waiver of the company's right to request an extension and may be grounds for the department to deny the company an extension.

- K. Should the company fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs F through J the company 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 certified or cashier's check made payable to "*Boone County Treasurer, as custodian of the Boone 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

- L. Nothing in this AOC forgives the company from future non-compliance with the laws of the state of Missouri, nor requires the department or state of Missouri to forego pursuing by any legal means for any non-compliance with the laws of the state of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- M. 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.
- N. 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 company for its records.
- O. The company shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, the company 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.

VI. CORRESPONDENCE AND DOCUMENTATION

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

Mr. Kurtis Cooper  
Department of Natural Resources  
Water Protection Program  
Compliance and Enforcement Section  
P.O. Box 176  
Jefferson City, MO 65102-0176

Agreed to and Ordered this 24<sup>th</sup> day of May, 2016

*for Steven Tuleu*  
\_\_\_\_\_  
Leanne Tippet Mosby, Director  
Division of Environmental Quality  
Missouri Department of Natural Resources

Agreed to and Ordered this 2<sup>nd</sup> day of May, 2016

*Bill Martin*  
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Mr. Bill Martin, owner  
Martin Builders, Inc.

Copies of the foregoing served by certified mail to:

Mr. Bill and Mrs. Kim Martin  
Martin Builders, Inc.  
7070 Hunter's Bend Road  
Ashland, MO 65010

CERTIFIED MAIL # 7012 2920 0002 0662 8575

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