

Missouri Clean Water Commission
Department of Natural Resources
Lewis and Clark State Office Building
LaCharrette/Nightingale Conference Rooms
1101 Riverside Drive
Jefferson City, Missouri 65102

May 2, 2012

**Country East Subdivision Wastewater Lagoon
Callaway County, MO-0116742**

Background: Country East Subdivision (Subdivision) is located in Fulton, Callaway County, Missouri. The Subdivision is served by a two (2)-celled facultative lagoon, owned and operated by the Country East Homeowner's Association (Association), which discharges to a tributary to Cedar Creek pursuant to Missouri State Operating Permit number MO-0116742.

Since June 9, 2009, the Department has conducted three (3) inspections at the lagoon. During these inspections, staff observed that the Association had constructed a new outfall without a construction permit, the baffle curtain separating the two (2) lagoon cells was in need of repair, and there were small trees and rill erosion on the inside of the lagoon berms. During an inspection conducted in June 2009, Department staff observed wastewater discharging over the west berm, and during an inspection conducted in August 2010, staff learned that a cap had fallen off of an abandoned influent line allowing the entire contents of the lagoon to discharge to the receiving stream. Discharge Monitoring Reports and chemical analysis, conducted by Department staff, revealed that the lagoon's effluent violated the permitted effluent limitations for Biochemical Oxygen Demand. Missouri State Operating Permit (MSOP) number MO-0116742 expired on August 24, 2011, and to date the Department has not received a completed application to renew the permit. Additionally, the permit includes a Schedule of Compliance which required the Association to complete upgrades that would enable the effluent to comply with Fecal coliform limitations that became effective August 23, 2011.

Issue: Since May 6, 2011, the Department has sent six (6) letters and spoken with Mrs. Debbie Jenks, president of the Association, by telephone in an attempt to resolve the violations through a negotiated Abatement Order on Consent. To date, the Department has not received a completed application to renew the operating permit or an engineering report or construction permit application for upgrades to the lagoon, and the Department and the Association have not been able to reach an agreement.

Recommended Action: Staff recommends that the Commission refer this matter to the Attorney General's Office for appropriate legal action to compel compliance, pursue civil penalties and any other appropriate form of relief.

Suggested Motion Language: "I move that the Commission refer this matter to the Attorney General's Office for appropriate legal action to obtain compliance with the Missouri Clean Water Law, civil penalties for past violations and any other relief deemed appropriate by the Attorney General's Office."

Attachments: Case Summary Sheet

MISSOURI DEPARTMENT OF NATURAL RESOURCES

Case Summary Information

Case Name: Country East Subdivision

Facility name(s) – List all current names of responsible parties (owner/operator) for actions at this site):

Mrs. Debbie Jenks, President
Country East Homeowner's Association (Association)

Facility address, including county, and contact information:

Mrs. Debbie Jenks, President
Country East Homeowner's Association
4239 Dean Place
Fulton, MO 65251
Callaway County
(573) 253-4421

Program(s): Water Protection Program (WPP)

Program Contact(s)/Regional Contact(s), with phone numbers:

Corinne Rosania, WPP Compliance and Enforcement Case Manager, (573) 751-6725
Jamie Shinn, Northeast Regional Office (NERO), WP Compliance Unit Chief, (660) 385-8070

Description of Facility and Situation:

Country East Subdivision (Subdivision) is a seventeen (17) lot housing development located in Fulton, Missouri. The Subdivision is served by a two (2)-celled facultative lagoon located in the NW ¼, SE ¼, Section 27, Township 48 North, Range 11 West, in Callaway County. The lagoon is operated by the Association, which was formed March 22, 1994. The lagoon has a design flow of 5,500 gallons per day (gpd) and an actual flow of 3,100 gpd. Sludge is retained in the lagoon, which has a design sludge production of 0.825 dry tons/year and an actual sludge production of 0.465 dry tons/year. The lagoon operates pursuant to Missouri State Operating Permit (MSOP) number MO-0116742, which became effective August 25, 2006, and expired August 24, 2011. Final daily maximum and monthly average Fecal Coliform limits of 400/100 ml and 1000/100 ml, respectively, became effective August 23, 2011; therefore, MSOP number MO-0116742 includes a Schedule of Compliance (SOC) for the facility to complete any upgrades required for the facility's effluent to comply with the final limitations. The receiving stream for the lagoon is an unnamed tributary to Cedar Creek. Cedar Creek is a Class C stream, and has beneficial uses of livestock and wildlife watering, protection of warm water aquatic life and human health-fish consumption, category "B" whole body contact recreation, and secondary contact recreation.

On June 9, 2009, staff from the NERO conducted a routine compliance inspection at the lagoon. During the inspection, NERO staff observed evidence of significant erosion and animal burrowing, as well as deep-rooted vegetation on the lagoon berms. The perimeter fence only had

one (1) warning sign, which was posted at the facility entrance. The perimeter fence had a lockable gate to prevent access to the facility, but the latch for the gate was bent and in need of repair. During the inspection, the **lagoon was discharging over the top of the west berm**, above the outfall. The discharge pipe was not discharging and the outfall was not marked in the field. No sludge was observed in the receiving stream. On June 24, 2009, the NERO issued the Association Notice of Violation (NOV) number NER2009062215445664 for violations observed during the June 9, 2009, inspection.

On September 14, 2009, the NERO received a letter from the Association stating that the lagoon level had dropped and was no longer overflowing, the discharge pipe had been unclogged, brush from around the lagoon had been cleared, a new gate had been installed, a pump had recently been replaced, and warning signs and an outfall sign had been ordered. Additionally, the Association had plans to clear the larger trees from the lagoon berm, move the perimeter fence, and bring in dirt to repair the berms in the near future.

On May 18, 2010, the NERO sent correspondence to the Association reminding them that MSOP number MO-0116742 contains a SOC for the facility to comply with final effluent limitations for fecal coliform. The letter also explained that the Water Quality Standards regulation, 10 CSR 20-7.031, was amended in 2005, and now requires that *Escheria coli* standards be used in permits with receiving streams designated for whole body contact or secondary contact recreation. Thus, the Association was advised to consider this new requirement when addressing the SOC for disinfection.

On July 27, 2010, the NERO sent a Letter of Warning (LOW) to the Association because Discharge Monitoring Reports (DMRs) indicated that effluent from the lagoon exceeded the limitation for Biochemical Oxygen Demand (BOD) during the second quarter of 2010.

On August 4, 2010, NERO staff conducted a compliance inspection of the lagoon in response to an environmental concern received August 2, 2010, reporting that a few months earlier a cap had come off a metal pipe that leads to the lagoon, and all of the wastewater from the lagoon had drained out. During the inspection, NERO staff observed that the facility had an abandoned influent line, which consisted of an eight (8) inch ductile iron pipe with a PVC cap and a rubber cuff on the end. During the inspection, the Association president, Mrs. Jenks, stated that the PVC cap had come off sometime during the last year and **allowed the entire contents of the lagoon to drain**. A new influent line, a four (4) inch PVC pipe, was observed a few feet south of the abandoned influent line. A construction permit was not obtained for installation of the new influent line. Staff observed that the outfall was properly marked, the facility had proper warning signs, and all but one (1) tree on the northern berm had been removed. NERO staff observed two (2) small rips in the baffle curtain that divides the lagoon into two (2) cells. Both cells of the lagoon were completely covered in duckweed. The facility was discharging during the inspection and water quality monitoring and sampling was conducted.

On August 20, 2010, the NERO issued the Association NOV number NER2010081214205160 for violations observed during the August 4, 2010, inspection. The transmittal letter required the Association to submit to the Department an appropriate response regarding corrective actions by September 10, 2010. On October 28, 2010, the NERO sent electronic correspondence to

Mrs. Jenks requesting that the Association submit to the Department, by November 3, 2010, an appropriate response to the violations and corrective actions listed in NOV number NER2010081214205160. On December 16, 2010, the NERO received electronic correspondence from Ms. Jenks stating that the Association repaired the facility fence and removed trees and brush from the berm.

On January 6, 2011, the NERO conducted a routine compliance inspection of the lagoon. During the inspection, staff observed evidence of rill erosion on the inside of the east berm where stormwater could enter the lagoon and small trees on the inside of the berms. The north end of the baffle curtain was separated from the berm and it had large rips in the top, which allowed wastewater to flow between the two (2) lagoon cells. **Bright green liquid was observed around the edges of the lagoon and below the outfall. The same bright green color was observed in the receiving stream for approximately 147 feet downstream of the outfall;** the receiving stream was clear in color above the outfall. The facility was discharging during the inspection and water quality sampling resulted in no violations of effluent limitations.

On January 14, 2011, the NERO issued NOV number NER2011011209283408 to the Association for violations observed during the January 6, 2011, inspection. The transmittal letter required the Association to submit to the Department an appropriate response regarding corrective actions by February 4, 2011, but the Department did not receive a response.

On January 21, 2011, the NERO issued NOV number NER2011012010023612 to the Association for failing to comply with the effluent limitations contained in Part "A" of MSOP number MO-0116742. MSOP number MO-0116742 has a monthly average BOD limitation of 65 mg/L and a weekly average BOD limitation of 45 mg/L. A BOD concentration of 48 mg/L was reported on the fourth quarter 2010 DMR and an effluent sample collected by NERO staff during the January 6, 2011, compliance inspection had a BOD of 65.9 mg/L, both in violation of MSOP number MO-0116742.

The Association was referred for enforcement on January 18, 2011. Since May 6, 2011, enforcement has sent six (6) letters to the Association and has spoken on the phone with Mrs. Jenks three (3) times, offering to resolve past violations of the Law and its implementing regulations through a negotiated Abatement Order on Consent (AOC). On August 29, 2011, the Department sent AOC number 2011-WPCB-1148 to the Association for consideration. To date, the Department has not been able to reach an agreement with the Association.

Responsible Party(s) (specify owner, operator, other [etc.]) and contact information if different from above:

Mrs. Debbie Jenks, President
Country East Homeowner's Association
4239 Dean Place
Fulton, MO 65251
Callaway County

Home Address:
4276 Dean Place
Fulton, MO 65251
(573) 253-4421

Law(s), Regulation(s) and Permit Conditions Violated: For each violation note starting some time before { } date and ending sometime before { }, or note "continuing."

1. Since at least June 9, 2009, failed to operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions in violation of Sections 644.051.1(3) and 644.076.1, RSMo.
2. Failed to comply with the effluent limits contained in Part "A" of MSOP number MO-0116742 in violation of Sections 644.051.1(3) and 644.076.1, RSMo.
3. Caused or permitted construction, installation or modification of any sewer system or of any water contaminant source, point source or wastewater treatment facility without first receiving a construction permit in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (4)(A).
4. Failed to prevent a discharge from a location other than the outfall permitted by the MSOP in violation of Section 644.076.1, RSMo.
5. Caused pollution of a tributary to Cedar Creek, waters of the state, or placed or caused or permitted to be placed a water contaminant 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.
6. Failed to provide oral and/or written notification to the Department for all bypasses as stated in the Standard Conditions in MSOP number MO-0116742 in violation of Sections 644.076.1, RSMo.

Relief Requested:

- Civil action for compliance and penalties (if injunction requested, please provide proposed compliance schedule)**
- Temporary Restraining Order**
- Coordination with federal government on criminal action**
- Other, specify:**

Draft AOC number 2011-WPCB-1148 with a suggested compliance schedule is attached.

Permit(s) Involved, including type and permit number:

MSOP number MO-0116742

Other Program Involvement (if applicable): n/a

Other Agency Involvement (if applicable): n/a

Most Recent Significant Action by Department or Responsible Party:

On January 5, 2012, the Water Protection Program, Compliance and Enforcement (enforcement) sent correspondence to the HOA requesting a response to the proposed AOC within seven (7)

days receipt of the letter. To date, the Department has not received a response from the Association.

Penalty Estimate:
\$4,500

Other Significant Aspects of the Case: On November 30, 2011, enforcement received a letter from Mr. John Ireland, owner of 4298 County Road 259, in Fulton, Missouri, stating that he disconnected his property from the Subdivision's lagoon and installed a Callaway County Health Department-approved onsite system. Enforcement called Mr. Kent Wood with the Callaway County Health Department and informed him that Mr. Ireland's property was part of the Subdivision, and therefore, should not have received approval from the County to install an onsite system.

CONTACT INFORMATION:

- **Department Staff – inspectors, other field staff, case managers and others involved in developing the referral. Name, position, e-mail address and phone number:**
Corinne Rosania, WPP Compliance and Enforcement Case Manager, (573) 751-6725, corinne.rosania@dnr.mo.gov

Jamie Shinn, Northeast Regional Office, WP Compliance Unit Chief, (660) 385-8070, jamie.shinn@dnr.mo.gov

- **Facility Owner(s) – for all defendants, include name, title, physical and mailing addresses and telephone numbers:**
Mrs. Debbie Jenks, Association President
Country East Homeowner's Association, 4239 Dean Place, Fulton, MO 65251
Home Address: 4276 Dean Place, Fulton, MO 65251
Home Phone Number: (573) 253-4421

- **Facility Operator(s):** n/a

- **Others (e.g., employees, neighbors, first responders or staff of other state, local or federal agencies):**

Mr. John Ireland, Home Owner in the Subdivision who installed onsite system through Callaway County Health Department
4298 County Road 259, Fulton, Missouri, (573) 721-4578

Attachments:

- Permit and permit application
- NOVs and LOWs
- Documentation of any site visits, including Environmental Assistance Visits
- Reports of inspections within last five years
- Penalty and penalty calculation
- All correspondence between Department and defendant

- All emails and phone logs**
- Copies of database entries**
- Copy of deeds for property where violation occurred (may be obtained from county recorder's office)**
- Secretary of State information documenting correct name of corporation, form of corporation or fictitious name registration, including information regarding registered agent**
- Sample Results**
- Photographs (electronic or color)**
- Evidence of Environmental Impact**
- Documentation of any Settlement Negotiations or In-Person Meetings**
- Map of the Site**