

IN THE CIRCUIT COURT OF BENTON COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
Chris Koster, the Attorney)
General of Missouri, and the)
Missouri Department of)
Natural Resources,)
)
Plaintiff,)
)
v.)
)
BENTON COUNTY SEWER)
DISTRICT NO. 1)
)
Defendant.)

FILED

OCT 3 2012

Clerk of the Circuit Court
Benton County

Case No. 12BE000052

CONSENT JUDGMENT

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and the Benton County Sewer District No. 1, by and through counsel, consent to the entry of this Consent Judgment.

The Court has read Plaintiff's Petition for Injunctive Relief and Civil Penalties, in which Plaintiff alleges that the Benton County Sewer District No. 1 violated the Missouri Clean Water Law. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition and that the parties want to terminate this controversy and consent to the entry of this judgment without trial.

Each and every term of this Judgment shall be enforceable by further order of this Court, and to that end, the Court retains jurisdiction of the matter in order to enforce each and every term of this Consent Judgment. The Court finds that the terms of this Consent Judgment protect the public's interest.

The parties, having consented to the entry of this Consent Judgment, it is hereby ORDERED, ADJUDGED AND DECREED that:

I. Objectives of the Parties

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

II. Definitions

2. Terms used herein shall have the same meaning as provided in the Missouri Clean Water Law, Chapter 644 RSMo and the regulations adopted thereunder. In addition, the following terms are specifically defined:

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

b. "Defendant" means the Benton County Sewer District No. 1.

c. “Department” means the Missouri Department of Natural Resources.

d. “Facility” means the wastewater treatment facility known as Blue Branch, located at Highway 65 & Wildcat Drive, Warsaw, Benton County, Missouri (“WWTF”).

e. “Plaintiff” means the State of Missouri on the relationship of Attorney General Chris Koster, the Department and the Missouri Clean Water Commission.

f. “Commission” means the Missouri Clean Water Commission.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to § 644.076 RSMo¹. The subject matter of this action involves the Missouri Clean Water Law, Chapter 644 RSMo, and its implementing regulations. The Defendant’s actions alleged in this petition took place in Benton County; therefore, venue is proper pursuant to § 644.076 RSMo.

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

IV. Parties Bound

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

V. Satisfaction and Reservation of Rights

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

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

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

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

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law or regulations promulgated under its authority.

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

VI. Injunctive Relief

7. Defendant agrees and is ordered to comply with all State of Missouri environmental statutes and all implementing regulations for any and all future activities in the State of Missouri.

8. Defendant agrees to and is ordered to complete the following compliance schedule:

A. Within thirty (30) days of the effective date of this Consent Judgment, Defendant shall complete the following operation and maintenance adjustments at the WWTF to ensure the components of the WWTF are fully functional at all times.

1. Repair or replace all filters in the recirculating tank;
2. Repair or replace all recirculation pumps;
3. Repair or replace all ultraviolet (UV) lamps;
4. Repair or replace all damaged quartz sleeves;
5. Repair or replace all distribution valves after all non-functioning filters and pumps are replaced or repaired;
6. Repair the control panels that operate the recirculation pumps;
7. The bioxide application system must be repaired, including new pumps, switches, and purchase of enough bioxide product to properly operate the system.

B. Within fifteen (15) days of the effective date of this Consent Judgment, Defendant shall retain a certified operator that holds a minimum level "C" certification to properly operate and maintain the WWTF. Defendant shall continue to retain the services of an operator with a minimum level "C" certification until such a time

that the WWTF is eliminated by connection to an areawide wastewater treatment and collection system. In the event the Defendant has a change of operators at any time in the future, the Defendant shall notify the Department in writing within ten (10) days of such occurrence.

C. By November 30, 2012, Defendant shall:

1. Complete solids removal and proper disposal. Defendant shall either ensure that the sludge is treated further to meet land application requirements, and then properly land apply the sludge, or haul the sludge to a permitted wastewater treatment facility that will treat and properly dispose of the sludge;
2. The Defendant shall have spare parts on hand for all equipment as needed for routine maintenance and repairs. A list of spare parts to be kept on hand must be included in the Maintenance and Repair Program as required in Paragraph "I" of this Consent Judgment.

D. The Defendant shall collect and analyze samples of the treated effluent from the WWTF's outfall for Ammonia as Nitrogen (ammonia) in accordance with the methods set forth in 10 CSR 20-7.015 (9) (A) 2, at a minimum of once a week until a Facility Plan is submitted to the Department for review and approval, in accordance with Paragraph "F" of this Consent Judgment.

E. The parties acknowledge that Defendant has submitted to the Department, for review and approval, an engineering evaluation developed by a professional engineer licensed to practice in the State of Missouri. Once the Department provides comments to the engineering evaluation, Defendant shall respond to the Department's comments within 30 days.

F. Defendant shall, pursuant to this paragraph, complete upgrades or replacement of its WWTF that will enable the effluent to comply with the Missouri Clean Water Law (Law) and its implementing regulations and all conditions and requirements of its Permit. The following required reports, plans, and specifications shall be prepared and sealed by a professional engineer licensed to practice in the State of Missouri pursuant to the following schedule:

1. On or before October 1, 2012, Defendant shall submit to the Department for review and approval, a facility plan prepared by a professional engineer licensed to practice in the State of Missouri. The facility plan shall be developed pursuant to the requirements contained in 10 CSR 20-8.110;
2. Within fifteen (15) days receipt of Department comments on the Defendant's facility plan, Defendant shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the facility plan;
3. Within sixty (60) days of the date the Department approves the facility plan, Defendant shall submit to the Department for review and approval, a complete application for a construction permit including plans and specifications signed and sealed by a professional engineer licensed to practice in the State of Missouri for the upgrades or replacement of the facility that will enable the effluent to comply with the final effluent limitations for Ammonia as N, as contained in the Permit. The facility plan shall also include a thorough evaluation of all other outstanding operational problems at the WWTF and include recommendations for addressing these issues.
4. Within fifteen (15) days receipt of Department comments on Defendant's construction permit application, Defendant shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the construction permit application;
5. Within one hundred and eighty (180) days of the date the Department issues a Construction Permit, Defendant shall complete construction of the approved upgrades;
6. Within thirty (30) days of completing construction, Defendant shall 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 is complete and operable in accordance with Department approved plans and specifications. In addition, a complete application requesting the issuance of the modified operating permit, must be submitted at this time;

7. Within thirty (30) days of completing construction of the improvements, Defendant shall achieve compliance with the final effluent limitations contained in Part "A" of the Permit.

G. By October 28, 2012, Defendant shall submit to the Department, the Inflow and Infiltration (I/I) Report for 2009, 2010, and 2011. In the event the I/I Report is not available, Defendant shall submit a response to the Department explaining why the report is not available. Defendant further shall submit all future I/I Reports and DMRs to the Department as required by the Permit. The I/I reports shall identify all preventative maintenance activities undertaken by the Defendant to address I/I in its collection system, as outlined in the Defendant's Maintenance and Repair Program, pursuant to Paragraph "I" of this Consent Judgment.

H. Within ninety (90) days of the effective date of this Consent Judgment, Defendant shall submit to the Department, for review and approval, a description of a written or electronic Tracking and Management System that documents information regarding Sanitary Sewer Overflow (SSO) events, bypasses and basement backups; and allows Defendant to organize and analyze information regarding SSO events, bypasses and basement backups collected by Defendant. Defendant shall immediately implement the provisions of

the Tracking and Management System upon receiving the Department's approval and to the extent practicable, incorporate this system into a computer-based program that allows Defendant's authorized personnel access to the information.

The Tracking and Management System shall include all information necessary for Defendant to establish an effective and useful information collection system for SSOs, bypasses, backup events, and responses to such events. The Tracking and Management System shall also be designed and operated in a manner that allows Defendant to use the system for operation and maintenance activities, long term management of Defendant's wastewater treatment system, and development of the Maintenance Program provisions required by Paragraph "I" of this Consent Judgment. The Tracking and Management System shall also incorporate the quality assurance and quality control practices Defendant will follow to ensure the accuracy and reliability of data collected and managed. The Tracking and Management System shall include, but not be limited to, the following:

1. The date and time (or best estimate) that the SSO, bypass or backup event began;
2. Precipitation data (including intensity and duration);
3. The source of information for the SSO, bypass or backup event, e.g., employee observation, electronic reporting or

- warning system, citizen complaint;
4. The specific (and general) location of the SSO, bypass or backup (i.e., street address and specific basin or geographic area of the Benton County Sewer District);
 5. The best estimate (unless monitored) of the duration of the SSO, bypass or backup event, including the ending date and time;
 6. The best estimate (unless monitored) of the volume discharged, including flow metering data, where applicable;
 7. Sampling results from any sampling performed;
 8. If applicable, the water body into which the wastewater was released;
 9. The specific cause(s) of the discharge, if known, including for backups, whether it was caused by Defendant's collection system or private service connections;
 10. Measurements taken to respond to the SSO, bypass or backup event and minimize the duration and/or impacts of the discharge;
 11. The specific measures Defendant intends to use to prevent recurrence of the SSO, bypass or backup event;
 12. The date and time a repair crew arrived on-site and the personnel involved, if repair was required; and
 13. The date and time of notification to the Department's Kansas City Regional Office, 500 NE Colbern Rd, Lee's Summit, MO 64086-4710.

I. By January 1, 2013, Defendant shall develop a Capacity,

Management, Operation, and Maintenance Program (CMOM

Program) for Defendant's wastewater collection and treatment system.

The suggested guidance for developing the program is the United

States Environmental Protection Agency's Guide for Evaluating

Capacity, Management, Operation, and Maintenance Programs at

Sanitary Sewer Collection Systems (Document No. EPA 305-B-05-02).

Defendant's CMOM Program shall include a schedule for routine and systematic inspection, maintenance and repair of the collection system and identify all known short and long term capital investment projects and activities Defendant anticipates will be necessary to ensure current and long term compliance with Defendant's Permit.

The Defendant's CMOM Program shall include a process to reevaluate the assumptions, schedules, and conclusions of the Defendant's CMOM, and revise the Defendant's CMOM Program as necessary to ensure it continues to provide a viable planning tool that will enable the Defendant to continue to effectively and efficiently operate the Defendant's wastewater treatment system and comply with the requirements of the Permit. The reevaluation process shall be planned no less frequently than every two (2) years after preparation of the Defendant's CMOM Program.

J. Immediate Reporting. The Defendant shall verbally notify the Department within twenty-four (24) hours from the time the Defendant becomes aware of any discharge from the WWTF that receives less than secondary treatment, regardless of whether or not the discharge is a violation of the Defendant's Permit and each SSO event, with the exception of backups that are contained within a building. The Defendant shall also submit a written report to the

Department within five (5) days from the time the Defendant becomes aware of any bypasses or SSOs as described above and report wet weather bypasses and SSOs with its DMRs. The written report shall contain the date, time, location, and estimated volume of the event, precipitation information (amount and duration), if any, and any additional information the Defendant determines may be helpful in explaining the event and its circumstances or impacts. Reporting required under this Subsection to the Department is in addition to any reporting required by the Permit.

VII. Information Collection and Retention

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

- a. monitor the progress of activities required under this Consent Judgment;
- b. verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendant's compliance with this Consent

Judgment.

10. Upon request, Defendant shall provide the State, through its authorized representatives, splits of any samples taken by Defendant.

11. Until five years after the termination of this Consent Judgment, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Judgment. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the State, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

12. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the State at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the State, Defendant shall deliver any such documents,

records, or other information to the State. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Judgment shall be withheld on grounds of privilege.

13. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

VII. Stipulated Penalties

14. In the event that Defendant fail to comply with any compliance deadline or requirements set forth in this Consent Judgment, Defendant shall be liable for stipulated penalties in accordance with the following schedule:

- a. \$100 per day for each day of each violation up to thirty days.
- b. \$200 per day for each day of each violation, from thirty-one days to sixty days.
- c. \$400 per day for each day of each violation, beyond sixty days.

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

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

penalties may be collected in addition to statutory penalties imposed for those violations.

IX. Modification

17. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among the parties, their successors and assigns and with the approval of the Court. All modifications shall be in writing and filed with the Court.

X. Costs

18. Defendant shall pay all court costs in this action.

The parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.

BENTON COUNTY SEWER DISTRICT NO. 1

Name: William Seeb
Title: President, BCSD #1
Date: 8-12-12

John C. H. A.
DIRECTOR
Joseph O. Duvalco
Director

MISSOURI ATTORNEY GENERAL'S OFFICE

By: Jennifer S. Frazier
Jennifer S. Frazier
Deputy Chief Counsel

Date: 8/16/12

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Steven Feeler
for Alan Reinekemeyer, Director
Division of Environmental Quality

Date: August 29, 2012

SO ORDERED.


Circuit Judge
Date: 10/3/12

