

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

IN THE MATTER OF:

Country Acres Mobile Home Park,
Formerly Jeri Baxter Mobile Estates
Wastewater Lagoon

No. 2012-WPCB-1135

SERVE:

Mr. Ken Gross, Owner
Country Acres Mobile Home Park,
Formerly Jeri Baxter Mobile Estates

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuance of this Abatement Order on Consent (AOC) number 2012-WPCB-1135 by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because the Department believes that the wastewater lagoon (lagoon) serving Country Acres Mobile Home Park (formerly Jeri Baxter Mobile Estates) in Johnson County, Missouri is in violation of the Missouri Clean Water Law (Law) and its implementing regulations. 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 Law Section 644.076.1, RSMo. Litigation may occur without further 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 of the Law, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve Mr. Ken Gross (Mr. Gross) of liability for, or preclude the Department from, initiating a judicial enforcement action to recover civil penalties for any future violations of the Law, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. Ms. Geraldine M. Baxter (Ms. Baxter) formerly owned and operated Jeri Baxter Mobile Estates (Estates), now Country Acres Mobile Home Park, located in Warrensburg, Missouri. The Estates consists of approximately forty (40) mobile homes, which are served by a three-celled wastewater lagoon (lagoon). The

lagoon has one (1) outfall and a gravity fed collection system with two (2) manholes. The lagoon's design flow is 10,500 gallons per day (GPD), the actual flow is 4,000 GPD, and the design population equivalent is 105. Sludge is retained in the lagoon and the design sludge production is 1.5 dry tons/year. The lagoon is located in the SW¼, NE¼, Section 18, Township 45 North, Range 25 West, in Johnson County, and operates pursuant to the terms and conditions contained in Missouri State Operating Permit number MO-0114898 (permit).

- B. The receiving stream for the lagoon is Fletcher Creek, which is waters of the state as defined in Section 644.016(26), RSMo.
- C. On or about June 28, 2011, Ms. Baxter sold the Estates to Mr. Gross.
- D. On December 1, 2011, the Department received an application from Mr. Gross to renew the permit. The application listed the facility name as Country Acres Mobile Home Park (Country Acres).
- E. On October 20, 2006, the Department issued the permit to Ms. Baxter. The permit contained Interim and Final Effluent Limitations for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS). The permit also provided Final Effluent Limitations for fecal coliform and Total Residual Chlorine (TRC). Final Effluent Limitations for BOD, TSS, fecal coliform and TRC became effective on October 20, 2009.
- F. On June 24, 2009 the Department issued two (2) Letters of Warning (LOW) to Ms. Baxter. One (1) LOW was issued because the February 2009 Discharge Monitoring Report (DMR) submitted to the Department indicated that the lagoon's effluent exceeded the permit effluent limit for BOD. The second LOW was issued because the April 2009 DMR indicated that the lagoon's effluent exceeded the permit effluent limit for TSS.
- G. On November 3, 2009, the Department issued a LOW to Ms. Baxter because the July 2009 DMR indicated that the lagoon's effluent exceeded the permit effluent limit for TSS.
- H. On January 19, 2010, the Department sent a letter to Ms. Baxter informing her that final effluent limitations for fecal coliform bacteria became effective on October 20, 2009. The letter also explained that if the lagoon was not able to meet the final effluent limits, then Ms. Baxter must immediately submit a completed application for a construction permit and an engineering report to install disinfection equipment.
- I. On March 23, 2010, Department staff conducted a compliance assistance visit at the Estates to inspect and outline remedial actions needed to ensure compliance. Staff indicated that trees, bushes, stumps and cattails should be cut and/or removed from the lagoon; the drainage pipes should be cleaned out to promote water flow; sludge should be hauled from the lagoon; a drainage ditch should be

installed to lead water from the outflow pipe to the creek; warning signs should be installed on the lagoon fence; and the outfall should be properly marked.

- J. On March 24, 2010, the Department issued four (4) LOWs to Ms. Baxter for exceeding permit effluent limits for fecal coliform in November and December 2009 and January and February 2010.
- K. On May 19, 2010, the Department issued Notice of Violation (NOV) number KCR2010051910213726 to Ms. Baxter for exceeding permit effluent limits for fecal coliform in November and December 2009 and February 2010. NOV number KCR2010051910213726 was transmitted to Ms. Baxter on June 3, 2010.
- L. On July 8, 2010, Estates staff reported a wet weather bypass at the lagoon. On July 9, 2010, the Department issued NOV number KCR20100709173963354 to Ms. Baxter for the bypass, which stated that the bypass caused pollution to Fletcher Creek, waters of the state. NOV number KCR20100709173963354 was transmitted to Ms. Baxter on August 13, 2010.
- M. On July 13, 2010, Department staff conducted a routine compliance inspection of the Estates. Staff alleged the following deficiencies:
 - 1. Failed to clearly mark the outfall.
 - 2. Failed to provide proper warning signs on all sides of the lagoon's perimeter fence.
 - 3. Failed to provide adequate fencing to prevent unauthorized access to the lagoon.
 - 4. Failed to operate and maintain the lagoon; sludge deposits were found in the receiving stream approximately fifty (50) feet from the effluent pipe.
 - 5. Caused pollution to waters of the state.
 - 6. Failed to maintain the inner berm slopes of the lagoon to be less than three to one (3:1).
 - 7. Deep-rooted vegetation was growing on the inner shoreline of all three (3) lagoon cells.
 - 8. Failed to install a chlorination/dechlorination system as required by the permit.
 - 9. Failed to control duckweed in all three (3) lagoon cells.
 - 10. Failed to position connection pipes to allow efficient flow between lagoon cells and adequate detention time.
- N. On July 23, 2010, the Department issued NOV number KCR2010072310333798 to Ms. Baxter alleging violations observed at the Estates during the July 13, 2010, inspection and file review. NOV number KCR2010072310333798 was transmitted to Ms. Baxter on August 31, 2010.
- O. On September 3, 2010, the Department received a letter from Ms. Baxter explaining that she hired a contractor to repair the lagoon berm, remove the duckweed from the lagoon cells, and remove muskrats from around the lagoon.

- P. On September 17, 2010, the Department received a letter from Ms. Baxter explaining that warning signs had been posted on the north, west, and south sides of the lagoon's perimeter fence, the perimeter fence had been repaired, the outfall had been marked, duckweed and cattails were being removed from the lagoon cells, the drainage pipes had been replaced and repositioned to promote water flow and adequate detention time in each cell, the effluent pipes had been replaced and repositioned, and the area around the lagoon was being mowed regularly. Additionally, Ms. Baxter stated that she was searching for an engineer to address the required chlorination/dechlorination upgrades.
- Q. On September 23, 2010, the Department received a letter from Ms. Baxter documenting her September 17, 2010, verbal request for a two (2) week extension to find an engineer. The new deadline was October 5, 2010.
- R. On November 1, 2010, Department staff visited the lagoon and met with the contractor doing repairs to the lagoon berms. Staff observed that the berms had been reconstructed and raised, outfall piping had been repaired or replaced, all the deep-rooted vegetation had been removed, warning signs had been installed, duckweed and cattails were being removed from the lagoons, and the effluent appeared clear and odorless. Staff learned that fence repairs would be completed after the berm work was completed.
- S. On November 23, 2010, the Department sent Ms. Baxter a letter explaining that the extended deadline of October 5, 2010, had passed and the Department had not received a completed construction permit application or engineering plans for construction of disinfection equipment at the Estates.
- T. On January 25, 2011, the Department received a copy of the September 2010 DMR, which had not been previously submitted.
- U. Since October 20, 2009, effluent monitoring reported on DMRs indicates that effluent from the lagoon exceeded the final effluent limitations for fecal coliform during the months of November and December 2009, January, February, and May through October 2010, and February 2011. DMRs for November and December 2010, reported that no discharge occurred from the lagoon.
- V. Section 644.076.1, RSMo, makes it unlawful to violate the Missouri Clean Water Law and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

III. CONCLUSIONS OF LAW

The violations of the Law and its implementing regulations alleged herein and observed at Country Acres, formerly the Estates, are as follows:

1. Failed to submit complete and timely DMRs, as required in Part "A" of the permit in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1.
2. Failed to operate and maintain facilities to comply with the Law and applicable permit conditions in violation of Sections 644.051.1(3) and 644.076.1, RSMo.
3. Failed to comply with the effluent limits contained in Part "A" of the permit in violation of Sections 644.051.1(3) and 644.076.1, RSMo.
4. Caused pollution to Fletcher 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.
5. Discharged water contaminants into waters of the state which reduced the quality of such waters 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 20-7.031 or applicable subsection of 10 CSR 20-7.031.

IV. AGREEMENT

- A. The Department and Mr. Gross desire to amicably resolve all claims that might be brought against Mr. Gross for the violations alleged above in Section III, Conclusions of Law, without Mr. Gross admitting 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 Mr. Gross under this AOC. If Mr. Gross sells or otherwise transfers Country Acres, then Mr. Gross shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of Mr. Gross under this AOC in writing. In such event, Mr. Gross shall provide thirty (30) days prior written notice of such assumption to the Department.
- C. Mr. Gross agrees to comply with the permit conditions, including submitting complete, accurate and timely DMRs to the Department.
- D. Within thirty (30) days of the effective date of this AOC, Mr. Gross agrees 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. The engineering report shall be developed in accordance with Missouri Clean Water Commission regulation 10 CSR 20-8.020, and shall evaluate the structural integrity of the lagoon and the lagoon's ability to comply with permit effluent limitations. The report shall include recommendations for upgrades necessary for the lagoon's effluent to comply with permitted effluent limitations and to prevent

future bypasses of wastewater from the lagoon. The report shall be submitted to Ms. Corinne Rosania, Compliance and Enforcement Section, Water Protection Program, Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102-0176.

- a. Within fifteen (15) days of receipt of comments from the Department on the engineering report, Mr. Gross shall submit to the Department a written response addressing all Department comments on the engineering report.
- b. If the Department-approved engineering report recommends operational changes and/or maintenance repairs, Mr. Gross shall fully implement all approved recommendations within thirty (30) days of the date the Department approves the engineering report.
- c. If the Department-approved engineering report recommends modifying the lagoon and/or collection system, Mr. Gross shall submit to the Department within thirty (30) days of the date the Department approves the engineering report a complete application for a construction permit including the appropriate fee, and plans and specifications prepared by a professional engineer licensed to practice in the State of Missouri.
- d. Within fifteen (15) days of receipt of comments from the Department on the construction permit application, Mr. Gross shall submit to the Department a written response addressing all Department comments on the construction permit application.
- e. Within thirty (30) days of the date the Department issues the construction permit, Mr. Gross agrees to complete construction in accordance with the construction permit.
- f. Within fifteen (15) days of completing construction, Mr. Gross agrees to submit the following documents to Ms. Corinne Rosania, Compliance and Enforcement Section, Water Protection Program, Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102-0176: 1) a signed and sealed Statement of Work Completed prepared by a professional engineer licensed to practice in the State of Missouri certifying that the project was completed according to the Department-approved plans and specifications and 2) an application with the appropriate fee to modify the operating permit to reflect the completed upgrades.

E. Should Mr. Gross fail to meet the terms of this AOC, including the terms set out in Paragraphs C through D, Mr. Gross shall 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	\$500.00 per day
91 days and above	\$750.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Johnson County Treasurer, as custodian of the Johnson County School Fund." Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- F. Nothing in this AOC forgives Mr. Gross 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 noncompliance 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.
- G. 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.
- H. 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 Mr. Gross for his records.
- I. Mr. Gross shall comply with the Law, Chapter 644, RSMo, and its implementing regulations, and the permit at all times in the future.
- J. In consideration of Mr. Gross' compliance with Section IV of this AOC, the Department agrees not to cause to bring an administrative or civil action for any damages, expenses, penalties, fees and costs against Mr. Gross and his representatives and affiliates for the violations of MCWLs and its regulations alleged in this AOC.

V. RIGHT OF APPEAL

By signing AOC No. 2012-WPCB-1135, Mr. Gross waives any right of appeal of the terms of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo. AOC No. 2012-WPCB-1135 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

However, Mr. Gross specifically reserves the right to appeal any permit decisions or engineering determinations which may result from the engineering report required in Section IV.D. of this AOC and from any requirement adopted by the Department or by the U.S. Environmental Protection Agency subsequent to the effective date as provided herein.

VI. CORRESPONDENCE AND DOCUMENTATION

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

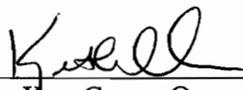
Ms. Corinne Rosania
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 6th day of June, 2012.



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

Agreed to this 23rd day of May, 2012.



Mr. Ken Gross, Owner
Country Acres Mobile Home Park
Formerly Jeri Baxter Mobile Estates

Copies of the foregoing served by certified mail to:

Mr. Ken Gross
21202 East Saddle Rock Lane
Aurora, CO 80016

CERTIFIED MAIL #

c: Ms. Diane Huffman
Chief, NPDES and Facilities Management Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII
901 North Fifth Street
Kansas City, KS 66101

Mr. Refaat Mefrakis, Chief
NPDES Permits & Engineering Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Ms. Dorothy Franklin, Regional Director
Kansas City Regional Office
Department of Natural Resources
500 NE Colbern Road
Lee's Summit, MO 64086

Dr. Samuel M. Hunter, Chair
Missouri Clean Water Commission
216 Tanner Street
P O Box 984
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Mr. Ben A. "Todd" Parnell, III, Vice Chair
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Mr. John Cowherd, Commissioner
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Mr. Buddy Bennett, Commissioner
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