

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and among the Missouri Department of Natural Resources (“Department”), the Office of the Missouri Attorney General (“Attorney General”), and Whirlwind Properties, LLC (“Whirlwind”). This Agreement is deemed to be executed on the date this document is signed and dated by the Department.

WHEREAS, Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri; and

WHEREAS, the Department is a duly authorized state agency created under Chapter 640 RSMo to administer the programs assigned to it related to environmental control and the conservation and management of natural resources; and

WHEREAS, the Department, on behalf of the Missouri Clean Water Commission, administers the provisions of the Missouri Clean Water Law and regulations (MCWL), Chapter 644 RSMo; and

WHEREAS, § 644.076.1 RSMo makes it unlawful to violate the MCWL and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation; and

WHEREAS, Whirlwind is an active Missouri corporation registered with the Missouri Secretary of State that owns and operates a mobile home

park known as El Ray Mobile Home Park (“MHP”). The MHP is located in the NE ¼, SE ¼, Sec. 35, T49N, R12W, Boone County, Missouri; and

WHEREAS, wastewater generated by the MHP is treated in a single-cell lagoon that has a design flow of 8,800 gallons per day (“lagoon”). Effluent from the lagoon discharges to tributary to Hominy Branch pursuant the requirements and conditions of Missouri State Operating Permit (“MSOP”) No. MO-0105520; and

WHEREAS, MSOP No. MO-0105520 requires Whirlwind to sample the effluent discharge from its lagoon once per quarter and chemically analyze the effluent sample for the parameters listed in part “A” of the permit. MSOP No. MO-010552 further requires Whirlwind to submit the results of the analysis to the Department on quarterly Discharge Monitoring Reports (“DMR”). The parameters listed in MSOP No. MO-0105520 include limits on Biochemical Oxygen Demand (“BOD”), Total Suspended Solids (“TSS”), pH, Ammonia as Nitrogen, Temperature, and Fecal Coliform. MSOP No. MO-01055220 further establishes limitations for BOD and TSS. The permitted monthly average limitation for BOD is 45 milligrams per liter (mg/L) and for TSS is 80 mg/L; and

WHEREAS, the Department did not receive the DMRs for third quarter of 2009 and the second quarter of 2011 in violation of § 644.076.1 RSMo and 10 CSR 20-7.015(9)(A)1; and

WHEREAS, on November 5, 2009, Department staff conducted an inspection of the lagoon. During this inspection, staff observed evidence of an overflow and discharges from the lagoon into the lagoon's receiving stream. During this inspection, staff collected an effluent sample, which showed that the TSS was 194 mg/L. Due to violations documented during this inspection the Department issued Notice of Violation ("NOV") No. NER2009111209453510 to Whirlwind; and

WHEREAS, untreated or partially treated wastewater is a water contaminant as that term is defined in § 644.016(23) RSMo, and the tributary to Hominy Branch is waters of the state as defined in § 644.026 RSMo; and

WHEREAS, beginning on or before November 5, 2009, and continuing through the present, Whirlwind placed, caused, or permitted wastewater to be placed in a location where it was reasonably certain to cause pollution to Hominy Branch in violation of §§ 644.051.1(1) and 644.076.1 RSMo; and

WHEREAS, on or about November 5, 2009, and continuing through the present, Whirlwind failed to comply with the effluent limitations contained in MSOP No. MO-0105520 in violation of §§ 644.051.1(3) and 644.076.1 RSMo, 10 CSR 20-6.010(8)(A)(4), and 10 CSR 20-7.015(4); and

WHEREAS, on or about November 5, 2009, and continuing through the present, Whirlwind failed to operate and maintain the lagoon in a

manner that prevented bypasses of wastewater in violation of §§ 644.051.1(3) and 644.076.1 RSMo, and 10 CSR 20-6.010(8)(A); and

WHEREAS, the Department, the Attorney General, and Whirlwind have discussed terms upon which to amicably resolve any and all claims which may be made against Whirlwind for the alleged violations of the MCWL listed in NOV No. NER2009111209453510; and

WHEREAS, Whirlwind does not admit liability or fault for the above-referenced allegations; and

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

1. The provisions of this Settlement Agreement shall apply to and be binding upon the Department, the Attorney General, and Whirlwind, as well as their successors in interest and their successors in office. Further, each party executing this Settlement Agreement shall be responsible for ensuring that their agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, adhere to the terms of this Settlement Agreement.

2. Whirlwind, in compromise and satisfaction of the Department's claims relating to the above-referenced alleged violations, agrees, without admitting liability or fault, to pay the sum of \$15,000.00 as a civil penalty.

The parties further agree that \$5,000.00 of said penalty shall be an up-front civil penalty. The remaining \$10,000.00 of the civil penalty shall be suspended for a period of two years on the condition that Whirlwind does not violate the MCWL, its MSOP, or the terms of this Settlement Agreement.

The parties further agree that \$2,500.00 of said penalty shall be paid upon Whirlwind's execution of this Agreement and \$2,500.00 of said penalty shall be paid within 30 days of the effective date of this Agreement. The checks for the civil penalty shall be paid in the form of a certified check or cashier's check made payable to "*State of Missouri (Boone County)*." The first check and the signed Settlement Agreement shall be mailed to: Collections Specialist, Office of the Attorney General, P.O. Box 899, Jefferson City, MO 65102-0899.

3. Within thirty (30) days of the effective date of this Settlement Agreement, Whirlwind shall submit a Closure Plan for the lagoon to the Department. The Closure Plan shall be developed pursuant the Standard Conditions contained in Part III, Section I of MSOP No. MO-0105520. The Closure Plan shall be submitted to Mr. Paul Dickerson, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102-0176.

4. Within fifteen (15) days receipt of Department comments on the Closure Plan, Whirlwind shall respond to and address, to the Department's satisfaction, all of the Department's comments on the Closure Plan.

5. In the interim until the lagoon is properly closed pursuant to a closure plan approved by the Department, Whirlwind shall comply with all conditions and requirement of MSOP No. MO-0105520, including, but not limited to, the effluent limitations for BOD, TSS, pH and Fecal Coliform.

6. In the event the effluent fails to comply with any effluent limitation, Whirlwind shall immediately cease all discharge from the lagoon and pump and haul wastewater from the lagoon to a permitted wastewater treatment facility with the capacity to treat the wastewater. Whirlwind shall continue pumping and hauling wastewater to prevent any overflows or discharges of sewage to waters of the state until such time as the lagoon is closed pursuant to a Department-approved Closure Plan.

7. Whirlwind shall maintain pumping and hauling receipts and make these receipts available to the Department upon request. The receipts shall include the date the wastewater was pumped, the number of gallons pumped, and the name of the wastewater hauler and the permitted facility accepting the wastewater.

8. Within one hundred eighty (180) days of the date the Department approves the Closure Plan, Whirlwind shall complete the following: i) complete closure of the lagoon pursuant to the Department-approved Closure Plan; 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 a complete Request for Termination of a State Operating Permit (Form J), and, if applicable, a complete Request for Termination of a General Permit (Form H).

9. In the event lagoon -closure activities require disturbing one acre or more than one acre of land, Whirlwind shall obtain a General Permit for land disturbance from the Department prior to beginning land disturbance activities. Whirlwind shall comply with all requirements and conditions of the General Permit for land disturbance activities.

10. Should Whirlwind fail to meet the terms of this Settlement Agreement, including the deadlines set out in paragraphs 3, 4, 5, 6, 7, and 8, Whirlwind agrees 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	\$500.00 per day
91 days and above	\$1,000.00 per day

11. Stipulated penalties will be paid in the form of a certified check or cashier's check made payable to "*State of Missouri (Boone County)*." Any such stipulated penalty shall be paid within 10 days of demand by the Attorney General and shall be delivered to: Collections Specialist, Office of the Attorney General, P.O. Box 899, Jefferson City, MO 65102-0899. The stipulated penalties provided for in this Settlement Agreement shall be in

addition to any other rights, remedies, or sanctions available to the State of Missouri for Whirlwind's violation of this Agreement or applicable state laws.

12. Whirlwind agrees that is it bound by applicable state of Missouri environmental statues and their implementing regulations for activities in the state of Missouri. Nothing herein shall be construed as forgiving future non-compliance with all state of Missouri environmental statues and their implementing regulations. Nothing in this Settlement Agreement shall serve as an admission by Whirlwind of any violation.

13. No portion of any civil penalty paid pursuant to this Settlement Agreement may be used to reduce Whirlwind's federal or state tax obligation.

14. In the event Whirlwind fails to pay any suspended or stipulated penalty as described herein or comply with the terms as specified herein, a breach of this Settlement Agreement shall have occurred and the Department may pursue litigation to compel compliance or any other remedies allowed by state law.

15. Whirlwind agrees not to contest the validity or the terms of this Agreement, or the procedures or circumstances relating to it, in any action brought by the Department or the Attorney General to enforce the terms of this Agreement.

16. Upon receipt of full payment of the above-mentioned penalty and full compliance with all provisions of this Settlement Agreement, the

Department and the Attorney General agree not to bring, or cause to be brought, any civil or administrative action against Whirlwind arising out of the above-referenced violations of the MCWL, Chapter 644 RSMo, and listed in NOV No. NER2009111209453510.

17. All signatories to the Agreement acknowledge that they have read and understood the terms of the Agreement and that they are fully authorized to bind their respective parties to this Settlement Agreement as evidenced by their signature on this Settlement Agreement.

18. The terms stated hereinabove constitute the entire and exclusive agreement of the parties hereto. There are no other obligations of the parties, be they express or implied, oral or written, except those which are expressly set forth hereinabove. The terms of this Agreement supersede all previous memoranda of understanding, notes, conversations and agreements express or implied. This Agreement may not be modified orally.

SO AGREED:

WHIRLWIND PROPERTIES, LLC

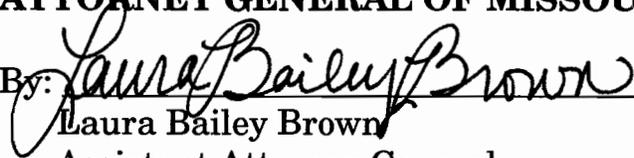
By: 

Printed Name: Ron Netemeyer

Title: Manager

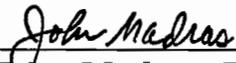
Date: March 8, 2012

**CHRIS KOSTER
ATTORNEY GENERAL OF MISSOURI**

By: 
Laura Bailey Brown
Assistant Attorney General

Date: 03/19/2012

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: 
John Madras, Director
Water Protection Program

Date: 3/23/12