

II. FINDINGS OF FACT

- A. Mr. Penrod owns and operates a three (3) cell wastewater treatment lagoon, known as Essex Place Sewage Lagoon (lagoon) that serves seven (7) duplexes and a triplex in the Essex Place Subdivision (Subdivision). On April 12, 2007, Mr. Penrod filed a plat with the Cape Girardeau County Recorder's Office, plotting fourteen (14) lots in the residential subdivision development. Between 2007 and 2011, Mr. Penrod sold the triplex and duplexes to multiple individuals. The lagoon is located in the NE ¼, SW ¼, Section 18, Township 32 North, Range 13 East, in Cape Girardeau County and has a design flow of 5,100 gallons per day and design sludge production of 0.8 dry tons per year. The lagoon operates pursuant to Missouri State Operating Permit (MSOP) Number MO-0122807 (operating permit). Pursuant to the operating permit, the lagoon discharges effluent through Outfall #001 to an unnamed tributary to Cane Creek. Cane Creek is a Class C stream, and has beneficial uses of livestock and wildlife watering, protection of aquatic life, whole body "B" contact recreation, and secondary body contact recreation.
- B. On April 23, 2008, the Department received an application for a MSOP from Mr. Penrod, identifying himself as the owner and continuing authority for the lagoon. On August 29, 2008, the Department issued MSOP Number MO-0122807 to Mr. Penrod as the owner and continuing authority for the lagoon.
- C. The operating permit issued to Mr. Penrod on August 29, 2008, included a Schedule of Compliance (SOC) for Mr. Penrod to complete upgrades to the lagoon that would enable effluent to comply with final effluent limitations for Fecal Coliform and Total Residual Chlorine, which took effect August 29, 2011. To date, Mr. Penrod has failed to submit an engineering report or construction permit application for disinfection and, if necessary, dechlorination upgrades.
- D. Cane Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (26), RSMo.
- E. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(23), RSMo.
- F. On April 20, 2010, Department staff conducted a compliance inspection of the lagoon. During the inspection, Department staff also noted there was no discharge pipe or transfer pipes between the lagoon cells. Department staff noted the receiving stream appeared clear above the lagoon cells, but a large pool of heavy green algae was observed in the receiving stream near the northeast corner of lagoon cell three (3). Department staff also observed that the wastewater level in the lagoon had recently been at a higher level than it was during the inspection. Department staff noted that the change in water height in the lagoon could be an indication that the lagoon is leaking since there was no outfall.

- G. On May 18, 2010, the Department issued a Letter of Warning (LOW) to Mr. Penrod for failing to comply with the SOC, failing to provide adequate fencing and warning signs, failing to properly monitor the lagoon, and failing to properly mark the Outfall #001. The LOW recommended that Mr. Penrod install transfer pipes between the lagoon cells and install an outfall pipe. Additionally, the LOW required Mr. Penrod to submit to the Department by August 30, 2010, an engineering report which addresses the SOC requirements and assesses the leakage rate of the lagoon.
- H. On November 3, 2010, the Department issued a LOW to Mr. Penrod for failing to submit an engineering report as required by the SOC, failing to submit a complete application for a construction permit, and failing to submit an engineering assessment of the potential leakage rate of the lagoon. The LOW requested Mr. Penrod to submit an engineering report and a complete application for a construction permit to the Department by November 30, 2010.
- I. On December 14, 2011, Department staff conducted a compliance inspection of the lagoon, and documented that there was little to no change in the lagoon from the April 20, 2010, inspection. Department staff observed willow trees growing in cell number three (3) and rodent damage in the lagoon berms. Staff also documented that the lagoon lacked an outfall pipe and transfer pipes between the lagoon cells. During this inspection, staff noted that Mr. Penrod had not submitted a complete application for a construction permit, or completed upgrades to the lagoon, as required by the SOC in the operating permit.
- J. On January 24, 2012, the Department issued Notice of Violation Number 19082SE to Mr. Penrod for failing to upgrade the lagoon as required by the operating permit's SOC and failing to restrict access to the lagoon and provide proper warning signs.
- K. According to the Warranty and Quitclaim Deeds, the lots in the Subdivision were conveyed from Mr. Penrod to the individual Owners on the following dates:

Date Transferred	Owners	Lots
April 18, 2007 and April 28, 2007	Jonathan Ross and Auritte Ross	2 and 3
May 9, 2007	Clifton Williams and Delma Williams	4 and 13
July 16, 2009	Dave Kusmik and Melanie Kusmik	11 and 12
February 28, 2011	Bart Anthony Vandeven	10

- L. Pursuant to 10 CSR 20-6.010(3) (A), All applicants for construction or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made. "In addition, pursuant to 10 CSR 20-6.010 (3) (B), Continuing authorities which can be issued permits to collect and/or treat wastewater under this regulation are listed in preferential order in paragraphs listed in this paragraph under this regulation. Mr. Penrod no longer meets the qualifications to be considered a valid continuing authority since he does not have complete control of, and responsibility for, the water

contaminant source, point source, or wastewater treatment lagoon and all property served by it.

- M. Section 644.076.1, RSMo, makes it unlawful to violate the 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

Violations of the Law and its implementing regulations alleged herein and found to have been committed by the Owners at the lagoon are as follows:

1. Failure to submit reports and complete upgrades to the lagoon as required in part "B", Standard Conditions, and part "D", Schedule of Compliance of MSOP Number MO-0122807, in violation of Sections 644.076.1, RSMo, 10 CSR 20-6.010(7)(A); and
2. Failure to maintain a valid Continuing Authority for MSOP Number MO-0122807, in violation of Sections 644.071.1, RSMO, and 10 CSR 20-6.010(3).

IV. CORRECTIVE ACTIONS

Under the authority of Section 644.056.3, RSMo, which authorizes this Abatement Order, the Owners, its offices, agents, employees, successors, and assigns shall:

1. In the interim, until the upgrades to the lagoon are complete, in accordance with Department-approved plans and specifications contained in the construction permit and the operating permit is transferred to a valid continuing authority, Mr. Penrod and/or the Owners shall prohibit all new sewer connections to the collection system for the lagoon.
2. Within 60 days of the effective date of this Abatement Order, the Owners shall submit to the Department for review and approval, an engineering report and a complete application for a construction permit which includes plans and specifications for upgrades and/or replacement of the lagoon. The engineering report's plans and specifications must be 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 Regulation 10 CSR 20-8.020. The engineering report shall include a comprehensive evaluation of the current condition of the lagoon, and wastewater treatment options and recommendations that will enable the effluent to comply with applicable effluent limitations contained in MSOP Number MO-012807, including the final limitations for Fecal Coliform and Total Residual Chlorine. The report may provide recommendations for conversion of the facility to a permitted no-discharge land application system. The engineering report shall also include a detailed plan that includes a schedule to assess the leakage rate of the lagoon pursuant to 10 CSR 20-8.020(16), followed by submission to the

Department of an engineering report detailing the findings of the leakage rate assessment and recommended corrective actions necessary to address the leakage. The schedule to assess the leakage rate of the lagoon, construction permit application, and engineering report shall be submitted to Mr. Graham Freeman, Missouri Department of Natural Resources, Water Protection Program, Compliance and Enforcement Section, P.O. Box 176, Jefferson City, MO 65102-0176.

3. Within 15 days receipt of the Department's comments on the construction permit application and engineering report, the Owners shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the construction permit and engineering report
4. Within 120 days of the Department's issuance of the construction permit, the Owners shall complete all construction activities in accordance with Department-approved plans and specifications in the construction permit; submit a Statement of Work Completed form, signed, sealed, and dated by a professional engineer licensed in the State of Missouri certifying the project was complete in accordance with Department-approved plans and specifications; submit a complete application for the modification of the operating permit to reflect the improvements; and provide documentation that the continuing authority listed on the application complies with the requirements of 10 CSR 20-6.010(3).
5. Immediately upon becoming aware that a deadline or milestone as set forth in this Abatement Order will not be completed by the required deadline, the Owners 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 (5) days of notifying the Department, the Owners 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 Owners' right to request an extension and may be grounds for the Department to deny the Owners an extension.
6. Should the Owners fail to meet the terms of this Abatement Order, including the terms set out in Paragraphs A through D, the Owners shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Cape Girardeau County Treasurer, as custodian of the Cape Girardeau 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

7. No portion of the stipulated penalties paid pursuant to this Abatement Order may be used to reduce the Owners' federal or state tax obligation.
8. Nothing in this Abatement Order forgives the Owners 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 which are expressly set forth herein. The terms of this Abatement Order supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This Abatement Order may not be modified orally.
9. The Owners shall comply with the Law, Chapter 644, RSMo, and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

Pursuant to Section 644.056.3 and Section 621.250.3, RSMo, if you are adversely affected by this decision, you may appeal to have the matter heard by the Administrative Hearing Commission (AHC). To appeal, you must file a petition with the AHC within thirty (30) days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed by the AHC to be filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal shall be directed to:

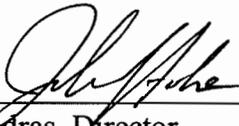
Administrative Hearing Commission
Truman Building, Room 640
P.O. Box 1557
Jefferson City, MO 65102

VI. CORRESPONDENCE AND DOCUMENTATION

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

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

Ordered this 28 day of August, 2012.



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

Copies of the foregoing served by certified mail to:

CERTIFIED MAIL #
Mr. William Penrod and Mrs. Karen Penrod
Essex Place
307 County Road 533
Jackson, MO 63755

CERTIFIED MAIL #
Mr. Jonathan Ross and Mrs. Auritte Ross
169 Jordan Avenue
San Francisco, CA 94228

CERTIFIED MAIL #
Mr. Clifton Williams and Mrs. Delma Williams
1212 Begonia CT
Upland, CA 91784

CERTIFIED MAIL #
Bart Anthony Vandeven Trust
1316 West Jackson Boulevard
Jackson, MO 63755

CERTIFIED MAIL #

Mr. David Kusmik and Melanie Leilani Kusmik
1101 Woodpark CT
San Jose, CA 95116

On this _____ day of _____, 2012.

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

Mr. Jack McManus
Chief Counsel, Agriculture and Environmental Division
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