

FILED

IN THE CIRCUIT COURT OF OSAGE COUNTY, MISSOURI

2007 MAY 23 AM 10:54

STATE of MISSOURI, ex rel. )  
JEREMIAH W. (JAY) NIXON, Attorney )  
General, and DOYLE CHILDERS, )  
Director, MISSOURI DEPARTMENT of )  
NATURAL RESOURCES, )

CHARLENE JEISTERHOLD  
OSAGE CO. CIRCUIT CLERK

Plaintiff, )

RECEIVED

MAY 29 2007

v. )

Case No. 06OS-CC00013 MO ATTORNEY GENERAL

MARK A. KUSTER and MICHAEL J. KUSTER, )  
d/b/a GREEN ACRES SUBDIVISION, and )  
owners of the wastewater treatment lagoon )  
that serves residents of Green Acres Subdivision, )

Defendants. )

FINAL CONSENT JUDGMENT

COMES NOW the parties and stipulate as follows:

1. Jeremiah W. (Jay) Nixon is the duly qualified, elected, and acting Attorney General of Missouri and as such is authorized to institute, in the name and on behalf of the state, civil proceedings in law and in equity as necessary to protect the rights and interests of the state pursuant to § 27.060, RSMo. The Attorney General is authorized to bring this suit for penalties (\$10,000.00 per violation per day or part thereof that the violation continues) and injunctive relief to enforce the Missouri Clean Water Law (Chapter 644, RSMo) by § 644.076, RSMo, as requested by the Director of the Department of Natural Resources.

2. Doyle Childers is the duly appointed and acting Director of the Department of Natural Resources. The Department (DNR), under the charge of its Director, is a duly authorized state agency created pursuant to § 640.010, RSMo, to enforce the provisions of the Missouri

Clean Water Law and regulations pursuant thereto. The Director is authorized to ask the Attorney General to commence civil actions against violators of the Missouri Clean Water Law.

3. Defendants Michael J. and Mark A. Kuster own a three-cell domestic wastewater treatment lagoon located in the Green Acres Subdivision, located in the NW 1/4, SW 1/4, Section 21, Township 43 North, Range 8 West, Osage County, Missouri.

4. Defendants, as owners of the lagoon, applied for and received Missouri State Operating Permit # MO-0101541 for the lagoon. They did not renew it when it expired in 1993.

5. The lagoon discharges effluent into the waters of the state, specifically, an unnamed tributary to Owens Creek. The lagoon is a "point source" and a "water contaminant source," as those terms are defined in § 644.016, RSMo.

6. According to the permit issued to the defendants for operation of the lagoon, the design flow of the facility is 14,000 gallons per day, from a design population of 140 persons. Design sludge production is 1.0 dry tons per year. Sludge is retained in the lagoon.

7. Because the defendants are owners of the lagoon, and because they applied for and received a state operating permit for it, they are required to ensure that it is operated under a permit and in a manner that complies with the Missouri Clean Water Law, Chapter 644, RSMo, and implementing rules of the Missouri Clean Water Commission.

8. Osage County is a proper venue for this action under § 644.076.1, RSMo, because the lagoon, which has caused violations of the Missouri Clean Water Law, is located in Osage County.

9. The defendants, the Department, and the Attorney General entered into a settlement agreement, effective October 1, 1998, in which the defendants agreed to renew the

then expired permit. They also agreed to either provide a connection of Green Acres Subdivision to a municipal or regional sewer collection and treatment system, or upgrade the lagoon to meet effluent limitations for losing streams by submitting plans, specifications, and a construction permit application, together with the appropriate fee. The agreement allowed the Kusters to request — and the Department to grant — a one-year extension to connect their facilities to a municipal or regional sewer collection and treatment system, should one be under construction but not available two years from the execution of the agreement.

10. As required by the settlement agreement, the Department renewed the permit on May 21, 1999. It included a schedule of compliance, which required the permittees:

- A. To connect the wastewater system to a regional or municipal sewer system by May 1, 2001, or
- B. To upgrade the current system by:
  - i. Submitting an engineering report, plans, and specifications, and application for a construction permit by May 1, 2001; and
  - ii. Obtaining a construction permit and beginning construction by November 1, 2001; and
  - iii. Completing construction and submitting both an application for a state operating permit along and a certification of completed construction by an engineer no later than May 1, 2002.

11. The defendants did not comply with the requirements of either of the alternatives set forth in the October 1, 1998 settlement agreement and in the permit's compliance schedule.

12. The defendants failed to apply for renewal of the permit at least 180 days before it

expired, in violation of §§ 644.051.9 and 644.076.1, RSMo, and 10 CSR 20-6.010(5)(C), and allowed the permit to expire May 20, 2002.

13. The defendants operated the lagoon without a permit, in that the defendants allowed the permit to expire May 20, 2002, in violation of §§ 644.051.2, 644.076.1, and 578.215.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

14. The defendants failed to pay annual operating fees from February 2000 forward as required by 10 CSR 20-6.011(1)(F) and (G).

15. Since this lawsuit was filed, the defendants have taken the following actions to correct the above violations:

- A. Defendants have paid all delinquent fees and penalties as required by 10 CSR 20-6.011(1)(F) and (G) and as demanded in the petition.
- B. Defendants have filed an application for a permit that includes a schedule for connecting the Green Acres Subdivision to the to the City of Linn wastewater treatment system within 90 days of notice of its availability or by September 1, 2008, whichever is first, and closing the lagoon within six months thereafter.
- C. Defendants have executed a transfer of a right-of-way easement to the City of Linn for the purpose of establishing a sewer line that will serve the Green Acres Subdivision. The city has separately agreed to provide service upon the completion of construction. Defendants shall apply for a construction permit for the line that connects the subdivision to the service and complete the construction.
- D. Defendants have made arrangements to provide for the proper maintenance and operation of the lagoon, as required by the permit and by the Missouri Clean

Water Law and implementing regulations, until it is properly closed pursuant to a plan approved by the Department of Natural Resources.

E. Defendants have agreed that all notices regarding the lagoon shall be sent to Mark A. Kuster at his address, rather than to Michael J. Kuster.

16. Defendants have agreed to pay a penalty in the amount of \$6,000.00 for deposit into the Osage County School Fund to resolve their liability for past noncompliance with the Missouri Clean Water Law and regulations and for breach of the 1998 Settlement Agreement, and upon payment the State agrees to release the defendants from all claims that could be brought against them for past violation of the law and the 1998 Settlement Agreement. The penalty payment shall be made by check payable to the **State of Missouri (Osage County School Fund)** and shall be mailed to: JoAnn Horvath, Collections Specialist, Attorney General's Office, P.O. Box 899, Jefferson City, Missouri 65102-0899, within thirty days of the entry of this final Consent Judgment.

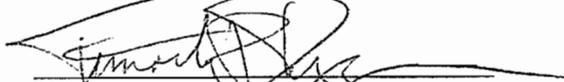
17. Defendants agree that the Court shall retain jurisdiction to enforce this Final Consent Judgment, and that upon their successful completion of the obligations set forth above, the State will file a Satisfaction of Judgment.

18. Defendants are ordered to pay the court costs for this action.

**FOR THE STATE OF MISSOURI**

Respectfully submitted,

**JEREMIAH W. (JAY) NIXON**  
ATTORNEY GENERAL

  
TIMOTHY P. DUGGAN, MBE #27827  
Assistant Attorney General

P. O. Box 899  
Jefferson City, Missouri 65102  
Phone: (573) 751-9802  
TELEFAX No. (573) 751-8464  
Email: [tim.duggan@ago.mo.gov](mailto:tim.duggan@ago.mo.gov)  
**Attorneys for Plaintiff**

**FOR DEFENDANTS:**

**BROWN CORNELL FARROW**

SHANE LEE FARROW, MBE # 44368  
308 B Monroe Street  
Jefferson City, Missouri 65101  
Phone: (573) 556-6606  
TELEFAX No. (573) 761-5261  
Email: [shane@bcf-law.com](mailto:shane@bcf-law.com)  
**Attorneys for Defendant Mark A. Kuster**

*Mark A. Kuster*

**MARK A. KUSTER**

*Michael J. Kuster*

**MICHAEL J. KUSTER, MBE # 32839**

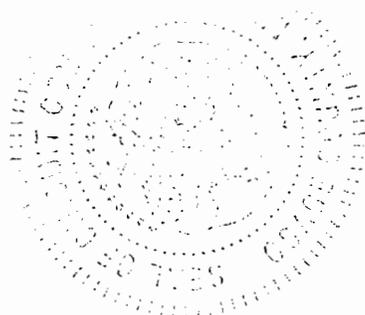
Attorney at Law  
200 West Dunklin  
Jefferson City, Missouri 65101  
Phone: (573) 636-2650  
TELEFAX: (573) 636-2511

APPROVED AND ENTERED THIS

23 DAY OF ~~MARCH, 2006~~

*May, 2007*

*Cynthia E. Kelkamp*  
JUDGE, CIRCUIT COURT, OSAGE COUNTY



*Certificate of True Copy*

STATE OF MISSOURI }  
COUNTY OF OSAGE }

I, CHARLENE J. EISTERHOLD, Clerk of the Circuit Court and Ex-Officio Recorder in and for said County, hereby certify that the above is a true copy of the original FINAL CONSENT JUDGMENT as the same appears in Case File #0605-000013 in my office.

WITNESS MY HAND and the seal of said Court. Done in my Office in Linn, Missouri, this 23 day of May, 2007

*Charlene J. Eisterhold*  
Circuit Clerk & Ex-Officio Recorder  
By \_\_\_\_\_, Deputy