

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI EX REL )  
CHRIS KOSTER, ATTORNEY )  
GENEREAL, THE MISSOURI )  
CLEAN WATER COMMISSION )  
AND THE MISSOURI )  
DEPARTMENT OF NATURAL )  
RESOURCES, )

Plaintiff, )

vs )

LANDMARK BUILDERS, INC., )

Defendant. )

Case No. 08BA-CV05047

CONSENT JUDGMENT

Plaintiff, State of Missouri, at the relation of Chris Koster, Attorney General, and the Missouri Department of Natural Resources and Defendant Landmark Builders, Inc., by and through counsel, hereby 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 Defendant violated the Missouri Clean Water Law (Chapter 644, RSMo) and its implementing regulations. 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.

This Consent Judgment is made, agreed upon and submitted to the Court for the purpose of settlement only, and upon the condition that the Court approves it in its entirety. In the event the Court does not approve of this Consent Judgment in its entirety and as agreed by the parties, it shall be null and void and have no effect in this or any other proceeding. The parties understand and agree that 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 hereto, having consented to the entry of this Consent Judgment, now therefore, before the taking of any testimony and upon the pleadings, 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 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 Landmark Builders, Inc.
- c. "Department" means the Missouri Department of Natural Resources.
- d. "Development" means Maryland Heights Subdivision.
- e. "Plaintiff" means the State of Missouri on the relationship of Attorney General Chris Koster, the Department and Missouri Clean Water Commission.

### **III. Jurisdiction**

3. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to § 644.076, RSMo (2000).<sup>1</sup>

### **IV. Parties Bound**

4. The provisions of this Consent Judgment 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

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

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 civil 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 regulations or under federal 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 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 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 State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law or regulations promulgated under its authority.

d. The Plaintiff 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. Within one-hundred-eighty (180) days of the entry of this Consent Judgment, Defendant agrees and is ordered to stabilize any disturbed and/or bare lots in the Development owned by the Defendant in order to prevent sediment from leaving the site. Stabilization shall be with perennial vegetation and shall cover at least seventy (70) percent of fully established plant density over one hundred (100) percent of the disturbed area.

8. Defendant agrees and is permanently enjoined to comply with the Missouri Clean Water Law and its implementing regulations for any and all future activities in the state of Missouri.

## 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 Defendant's 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.

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.

### **VIII. Civil Penalty**

14. Defendant consents to the entry of judgment in favor of the Plaintiff for a civil penalty of Fourteen Thousand Dollars (\$14,000.00). Defendant hereby authorizes entry of this judgment against it and in favor of the Plaintiff for this sum. Defendant agrees to pay the civil penalty by check made payable to the "*State of Missouri (Boone County)*." Defendant[s] shall pay the entire sum Fourteen Thousand Dollars (\$14,000.00) by delivering a check and a copy of this Consent Judgment within thirty (30) days of the entry of this Consent Judgment to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

### **IX. Stipulated Penalties**

15. In the event that Defendant fails to comply with the requirements set forth in this Consent Judgment, Defendant shall be liable for stipulated penalties in accordance with the following schedule:

- a. \$1,500.00 per day for each day of each violation up to thirty days.
- b. \$2,500.00 per day for each day of each violation, from thirty-one days to sixty days.
- c. \$5,000.00 per day for each day of each violation, beyond sixty days.

16. 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 (Boone 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.

17. 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.

#### **X. Notices and Submittals**

18. Whenever under the terms of this Consent Judgment that notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing of another individual designated to receive such communications. Notice to the individuals listed below or such other individuals designated pursuant to the foregoing, in writing and hand-

delivered or sent by registered or certified mail, postage prepaid, shall constitute complete satisfaction of any notice requirement of the Consent Judgment.

To the Missouri Department of Natural Resources:

Joan Doerhoff  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102  
Phone: 573-751-1300  
Fax: 573-522-9920

To the Attorney General's Office:

Raymond E. Haight  
Assistant Attorney General  
Agriculture and Environment Division  
State of Missouri Office of Attorney General  
207 W. High Street  
Jefferson City, Missouri 65102  
Voice: 573-751-8795  
Fax: 573-751-8796

**XI. Modification**

7. 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.

**XII. Costs**

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

LANDMARK BUILDERS, INC.

By: [Signature]

Printed Name: Brent Bennett

Title: President

Date: 12-29-11

CHRIS KOSTER, ATTORNEY GENERAL

By: [Signature] for Raymond E. Haight  
Raymond E. Haight  
Assistant Attorney General

Date: \_\_\_\_\_

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: [Signature]  
for Alan J. Reinkemeyer, Acting Director  
Division of Environmental Quality

Date: January 20, 2012

SO ORDERED.

[Signature] DIV 4

Circuit Judge

Date: 1.31.12