

IN THE CIRCUIT COURT OF DUNKLIN COUNTY, MISSOURI

STATE OF MISSOURI ex rel.,)
CHRIS KOSTER, Attorney General)
of Missouri, and the MISSOURI)
DEPARTMENT OF NATURAL)
RESOURCES,)

Plaintiff,)

v.)

JOE WHEELER d/b/a)
WHEELER ESTATES,)

Defendant.)

FILED

MAY 02 2012

DUNKLIN COUNTY
CIRCUIT CLERK

Case No. 10DU-CC00005

WATER PROTECTION PROGRAM
MAR 22 2012

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MAR 13 2012
WATER PROTECTION PROGRAM

CONSENT JUDGMENT

COMES NOW, Plaintiff, State of Missouri, at the relation of Chris Koster, Attorney General, and the Missouri Department of Natural Resources and Defendant Joe Wheeler d/b/a Wheeler Estates, by and through counsel, and 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 § 644.076.1, RSMo, and 10 CSR 20-6.030 of the Missouri Clean Water Law. 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:

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- 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 Joe Wheeler.
- c. "Department" means the Missouri Department of Natural Resources.
- d. "Facility" means Wheeler Estates, located in Dunklin County, Missouri..
- e. "Plaintiff" means the State of Missouri on the relationship of Attorney General Chris Koster, the Department and the Missouri Clean Water Commission.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to § 644.076, RSMo (2000). The subject matter of this action involves the Missouri Clean Water Law, Chapter 644, RSMo, and its implementing regulations. The Defendant's actions giving rise to this action took place in Dunklin County and venue is proper pursuant to § 644.076.1, RSMo.

IV. Parties Bound

4. The provisions of this Order shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors,

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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 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 its implementing regulations, or under other federal or state 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 the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

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b. Nothing in this Consent Judgment shall preclude the 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 the State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law or regulations promulgated under its authority.

d. The State of Missouri 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. Defendant agrees and is ordered to comply with all State of Missouri environmental statutes and all implementing regulations for any and all future activities in the State of Missouri.

8. Defendant further agrees to cease building and selling homes until he has completed construction of a Department approved centralized collection and treatment system and obtained a Missouri State Operating Permit. Defendant agrees to complete a program of improvements that

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include constructing a Department-approved wastewater treatment system to bring the facility into compliance with the Missouri Clean Water Law and its implementing regulation. Construction of the wastewater treatment system shall be conducted according to the following schedule:

a. Within thirty (30) days of the effective date of the Consent Judgment, the Defendant shall retain a professional engineer licensed to practice in the state of Missouri. Defendant shall submit, within thirty (30) days of the effective date of the Consent Judgment, a copy of the fully executed contract between Defendant and the hired engineer along with a letter from the engineer to the Department stating that the engineer has been retained to develop an Antidegradation Review and to submit all required engineering reports and documents related to the construction of a wastewater treatment and collection facility for Wheeler Estates Subdivision.

b. Within one hundred twenty (120) days of the effective date of this Consent Judgment, Defendant shall submit to the Department a preliminary engineering report and a complete Antidegradation submittal developed pursuant to the Missouri Antidegradation Rule and Implementing Procedure and the form for a Water Quality Review Assessment. Within fifteen (15) days of Defendant's receipt of comments from the Department on the Antidegradation Review, the Defendant shall respond to the Department in writing and adequately address to the Department's satisfaction all Department comments of the Antidegradation Review.

c. Within fifteen (15) days of the date the Department issues the Water Quality Review Sheet/Antidegradation Review Preliminary Determination, the Defendant shall submit to the Department an Antidegradation Review Public Notice Application with the Water Quality Review Sheet/Antidegradation Review Preliminary Determination. In the event the Department receives comments from the public notice of the Water Quality Review Sheet/Antidegradation Review, the Defendant shall submit to the Department within fifteen (15) days of the date of the Department's correspondence: a written response addressing to the Department's satisfaction all comments

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received from the Department; and if required, a Water Quality and Antidegradation Review Request Addendum.

d. Within sixty (60) days of the date of the Department's correspondence notifying the Defendant that the public notice of the draft Missouri State Operating Permit including the Antidegradation Review findings and preliminary determination has concluded, the Defendant shall submit to the Department an engineering report prepared by a professional engineer licensed to practice in the State of Missouri. The engineer's report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8.110(3) and shall include wastewater collection and treatment options for the Wheeler Subdivision, and the engineering report shall recommend the selected alternatives as presented in the Antidegradation Review, that will enable Defendant to achieve compliance with the Missouri Clean Water Law and its implementing regulation at Wheeler Estates Subdivision. The Defendant shall respond to and address to the Department's satisfaction all Department comments on the engineering report within fifteen (15) days of Defendant's receipt of said comments.

e. Within sixty (60) days of the Department's approval of the engineering report and the final Antidegradation Review, the Defendant shall submit to the Department a complete application for a construction permit including the completed application form, the appropriate fee, plans and specifications for the recommended wastewater collection and treatment option contained in the engineering report and approved by the Department and a completed Antidegradation Report from the Department or a No Degradation Form. The construction permit application shall identify the permanent organization which will serve as the continuing authority for the operation, maintenance and modernization of the facility for which the application is made and shall include documentation that the continuing authority has agreed to accept the facility. The continuing authority shall meet the requirements of the Missouri Clean Water Regulation 10 CSR 20-6.010(3)(B)1, 2, 3, or 5. The Defendant shall respond to and adequately address to the Department's satisfaction all Department comments on the construction permit application within fifteen (15) days of Defendant's receipt of said comments.

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f. Within one hundred and eighty (180) days of the Department's issuance of the construction permit, the Defendant agrees to complete construction of the wastewater collection and treatment system as approved in the construction permit, including the construction of service connections to all houses in Wheeler Estates that currently use on-site systems, provided that Defendant can obtain permission from homeowners for the service connections. In the event that Defendant cannot obtain permission from homeowners for service connections, Defendant shall construct a sewer line within the boundaries of utility easements within the subdivision in order to give the homeowners the option to connect to the centralized system at any time in the future.

g. The Defendant further agrees to obtain a storm water permit for land disturbance if construction activities including clearing, grading and excavating result in land disturbance equal to or greater than one (1) acre.

h. Within thirty (30) days of completing construction of the upgrades, the Defendant agrees to submit to the Department an engineer's statement of work completed and submit a complete application including the appropriate fee for a Missouri State Operating Permit and achieve compliance with all applicable permit effluent limits contained in Part A of the Missouri State Operating Permit.

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;

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- c. obtain samples and, upon request, splits of any samples taken by Defendant or his representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Judgment.

10. 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.

11. 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

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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.

12. 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

13. Defendant consents to the entry of judgment in favor of the State of Missouri for a civil penalty of Fourteen Thousand Dollars (\$14,000.00), Six Thousand Five Hundred Dollars (\$6,500.00) of which shall be suspended as described in paragraph 14. Defendant hereby authorizes entry of this judgment against him and in favor of the State of Missouri for this sum. Payment of the up-front civil penalty of Seven Thousand Five Hundred Dollars (\$7,500.00) shall be made in twelve (12) separate payments. Within thirty (30) days from the entry of this Consent Judgment, Defendant shall make the first payment of Six Hundred Twenty Five Dollars (\$625.00). The next eleven (11) payments shall be Six Hundred Twenty Five Dollars (\$625.00). All but the first payment shall be made by

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the 1st day of each succeeding month. All of the payments shall be made by submitting a check made payable to the “*State of Missouri (Dunklin County)*” to Collections Specialist, Missouri Attorney General’s Office, P.O. Box 899, Jefferson City, MO 65102-0899. If Defendant fails to make any payment within five calendar days of the due date, he shall become immediately liable for payment of the entire unpaid amount, including the suspended penalty described in paragraph 14.

14. Suspended Civil Penalty. Six Thousand Five Hundred Dollars (\$6,500.00) of the total penalty of Fourteen Thousand Dollars (\$14,000.00) shall be suspended upon the condition that Defendant complies with the Missouri Clean Water Law and its implementing regulations for a period of two (2) years from the entry of this Consent Judgment. Once a violation of the Missouri Clean Water Law is documented by the Missouri Department of Natural Resources, the Missouri Attorney General’s Office shall send a written demand for the suspended penalty to Defendant. Defendant shall have fifteen (15) days from its receipt of the written demand to submit the suspended penalty in the manner described in paragraph 13. The suspended penalty provided in this Consent Judgment shall be in addition to any other rights, remedies, or sanction available to State for Defendant’s violation of this Consent Judgment or applicable law.

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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. \$200.00 per day for each day of each violation up to thirty days.
- B. \$400.00 per day for each day of each violation, from thirty-one days to sixty days.
- C. \$800.00 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 (Dunklin 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

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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:

Mary Ann Sutter
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102-0176
Voice: 573-522-4018
Fax: 573-522-9920

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To the Attorney General's Office:

Sarah Mangelsdorf
Assistant Attorney General
Agriculture and Environment Division
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, Missouri 65102
Voice: 573-751-0052
Fax: 573-751-8796

XI. Modification

19. 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

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

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The parties hereby consent to this Consent Judgment through their
duly authorized representatives as indicated below.

JOE WHEELER

Joe Wheeler
Name
Title: owner
Date: 3-2-12

MISSOURI ATTORNEY GENERAL'S OFFICE

By: Sarah Mangelsdorf
Sarah Mangelsdorf
Assistant Attorney General
Date: 3-12-12

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Alan Reinkemeyer
for Alan Reinkemeyer, Acting Director
Division of Environmental Quality
Date: 3/30/2012

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SO ORDERED.

A TRUE COPY FROM THE RECORD
PAULA S. GARGUS, CIRCUIT CLERK
DUNKLIN COUNTY, MISSOURI

BY: Paula S. Gargus
DATED: May 2, 2012

[Signature]
Circuit Judge
Date: 5-2-12