

Kobe of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any, including future, violations of the Law, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

Whiteside Hidden Acres RV Park

- A. Dale E. and Shelly K. Whiteside (Whitesides) own the RV Park which has 250 spaces and is located in Hickory County.
- B. As part of the RV Park business, the Whitesides own and operate a permitted recirculating sand filter wastewater treatment system (sand filter) located in the SW ¼, NE ¼, NE¼ of Section 23, T36N, R22W, Hickory County, Missouri. The sandfilter serves Phase II of the RV Park and consists of a septic tank with recirculating sand filter, chlorination, and sludge disposal by contract hauler and has a design flow of 11,040 gallons per day (gpd). Effluent from the sand filter discharges from outfall #001 to an unnamed tributary to the Pomme de Terre River arm of Pomme de Terre Lake which is waters of the state as defined by Section 644.016 (26) RSMo, pursuant to the requirements of Missouri State Operating Permit (Permit) number MO-0120511 which was issued to the Whitesides with an effective date of March 10, 2005, and an expiration date of March 9, 2010. The Permit requires the Whitesides to sample the effluent discharged from outfall #001 quarterly, chemically analyze the effluent sample for the parameters listed in Part “A” of the Permit and submit the results of the analysis to the Department on quarterly discharge monitoring reports (DMRs) by the 28th day of the month following the reporting period.
- C. The Department received an application for renewal of the Permit and the Department placed a draft Permit for renewal on public notice on October 21, 2011. There were no comments during the public notice period, and the Permit was issued December 2, 2011. The Permit includes interim effluent limitations

and a final effluent limitation for Total Residual Chlorine that will become effective in one and a half years and one day from the date the permit is issued.

- D. The Whitesides also own and operate three (3) lagoons that receive wastewater generated in Phase I of the RV Park and Lucky's. Lucky's is owned and operated by Messrs. Douglas Scott Kobe and Nathan Routh (Messrs. Kobe and Routh). The lagoons are located in the SW ¼, SW ¼, Section 13, Township 36N, Range 22W, in the Sentinel Quadrangle of Hickory County Missouri and intermittently discharge effluent to tributaries to the Pomme de Terre River arm of Pomme de Terre Lake, which are waters of the state as defined by Section 644.016 (26). Neither the Whitesides nor Messrs. Kobe and Routh have obtained a Permit for the three (3) lagoons receiving wastewater generated by Phase I of the RV Park and Lucky's.
- E. All persons who build, operate, or maintain existing point sources, water contaminant sources, or wastewater treatment facilities shall apply to the Department for the permits required by Sections 644.051.2 and 644.051.3, and 10 CSR 20-6.010 (1) (A).
- F. On June 23, 2009, the Department issued a Notice of Violation (NOV) to the Whitesides for operation of the lagoons serving Phase I of the RV Park and Lucky's without a Permit and failure to submit timely DMRs as required by Permit number MO-0120511, for Phase II of the RV Park.
- G. On December 7, 2010, Department staff conducted an inspection of the unpermitted lagoons serving Phase I of the RV Park/Campground. Investigators observed that the lagoon serving the west side of Phase I had significant damage to the berm reducing its capacity to hold wastewater and noted very dark green grass adjacent to the damaged berm, indicating the lagoon discharges effluent intermittently.
- H. On December 7, 2010, Department staff conducted an inspection of the sandfilter and observed that its septic tank was full, but there was no discharge coming from

the outfall. Staff also observed Chlorine in the applicator tubes in violation of the Permit, which requires that Chlorine be removed after the recreational season. Staff noted that the outfall was not clearly marked and was found to be overgrown with vegetation.

- I. On January 12, 2011, the Department issued a NOV to the Whitesides for violations observed during the December 7, 2010, inspection. Violations included: Failure to submit an application for renewal of the Permit, failure to operate and maintain, failure to submit annual sludge reports, failure to submit timely DMRs, and failure to submit annual permit fees.
- J. On or about January 31, 2011, the Department received a letter from Mr. Whiteside indicating that an engineer was working with the RV Park/Campground to resolve the compliance issues. Mr. Whiteside also indicated that the engineer was requesting sixty (60) to ninety (90) days to complete plans for review.
- K. On August 15, 2011, the Department received an application for a Construction Permit (CP) from Mr. Bowden Campbell, P.E., of Lake Professional Engineering Services Inc. on behalf of the Whitesides.
- L. On September 15, 2011, Department staff conducted an investigation at the RV Park after receiving a report that an individual pumped wastewater from the Whiteside's sandfilter into a nearby ditch. During this time, staff observed evidence of a discharge and interviewed Mr. Doyle Boehs (Mr. Boehs). During the interview, Mr. Boehs stated that he had been hired by the Whitesides to repair the sandfilter and that he had pumped water from the recirculation tank into the ditch. Due to violations found during the September 15, 2011, investigation, the Department issued a NOV to the Whitesides and Mr. Boehs for causing pollution to a tributary to the Pomme de Terre River arm of Pomme de Terre Lake.
- M. On December 16, 2011, the Department received an engineering report submitted on behalf of the Whitesides, evaluating the hydraulic and organic loading of the sand filter to determine capacity along with recommended corrective actions. The

engineering report recommended treating wastewater flowing to the lagoons in the sandfilter, limiting the occupied lots in the RV Park to one hundred eighty (180), increasing the grease trap capacity and adding a dechlorination unit to the sandfilter. On May 4, 2012, the Department sent a letter approving the engineering report and requesting submission of a construction permit application.

- N. On May 29, 2012, the Department received an application for a construction permit, plans and specifications, and the appropriate fee submitted on behalf of the Whitesides.
- O. From January 1, 2007, through October 31, 2011, the Department has not received 15 of the 19 DMRs required by the Permit.

Lucky's Restaurant and Sports Bar

- A. Messrs. Routh and Kobe own Lucky's which has approximately 110 seats and is located in Hickory County.
- B. Wastewater generated by Lucky's discharges to an unpermitted lagoon located on the Whitesides' property, which intermittently discharges effluent to a tributary to the Pomme de Terre River arm of Pomme de Terre Lake which is waters of the state as defined by Section 644.016 (26) RSMo.
- C. On March 18, 2009, the Department issued a LOW to Messrs. Routh and Kobe, for contributing wastewater to an unpermitted lagoon. The Department enclosed a Schedule of Compliance (SOC) to address the violations and requested that Messrs. Routh and Kobe sign and return it within 30 calendar days of receipt of the letter.
- D. On April 15, 2009, the Department received a signed copy of the SOC from Mr. Routh, indicating that he and Mr. Kobe agreed to connect Lucky's to the sandfilter serving the RV Park.
- E. On April 5, 2011, Department staff conducted a compliance inspection of the lagoon and found that it was unpermitted and had little freeboard in the main cell,

due to a low berm on the western edge. Inspectors noted that the two (2) secondary cells had poorly constructed berms and were likely to discharge during periods of high flow or rain events. Due to the violations documented during the inspection, the Department issued a NOV to Messrs. Kobe and Routh notifying them of the violations and requiring them to correct the violations.

- F. On May 13, 2011, the Department issued a NOV, as a result of the violations documented by Department staff during the April 5, 2011, inspection. In the transmittal letter, the Department reminded Mr. Routh that he had signed a SOC indicating his intent to connect Lucky's to a permitted wastewater treatment facility (WWTF) serving the RV Park; as of the date of issuance, the terms of the SOC had not been met.

III. CITATIONS AND CONCLUSIONS OF LAW

The Department finds that the following violations of the Law, Chapter 644, RSMo, and its implementing regulations have occurred at the RV Park and/or Lucky's:

1. Operated, used or maintained a water contaminant source (unpermitted lagoon) which discharges to an unnamed tributary of Lake Pomme de Terre, waters of the state, without a Permit, Sections 644.051.2 and 644.076.1, RSMo and 10 CSR 20-6.010 (1) (A) and (5) (A);
2. Caused pollution of waters of the state or placed or caused or permitted to be placed, water contaminants in a location where they are reasonably certain to cause pollution of waters of the state, Sections 644.051.1(1) and 644.076.1, RSMo;
3. Failed to submit timely DMRs as required in Standard Conditions part 1, Section "A" (1) (b) of Permit number MO-0120511, Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1;
4. Failed to operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions, Sections 644.051.1(3) and 644.076.1, RSMo;
5. Failed to remove chlorine from the system at the end of the recreational season as required by Permit number MO-0120511 Standard Conditions part A, Section 644.076.1, RSMo; and
6. Failed to submit an annual sludge report as required by Permit number MO-0120511 Standard Conditions Part III, section K in violation of Section 644.076.1, RSMo.

IV. AGREEMENT

- A. The Department, the Whitesides, and/or Messrs. Routh and Kobe desire to amicably resolve all claims that might be brought against the Whitesides and/or Messrs. Routh and Kobe for the violations alleged above in Section III, Citations and Conclusions of Law, without the Whitesides and/or Messrs. Routh and Kobe admitting the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this Order, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties.
- C. The Whitesides, in compromise and satisfaction of the Department claims relating to the above-referenced violations, agree, without admitting liability or fault, to pay investigative costs in the amount of two hundred ninety-five dollars and forty-five cents (\$295.45). The payment for the investigative costs in the amount of two hundred ninety-five dollars and forty-five cents (\$295.45) is due upon the Whitesides' execution of this AOC and shall be in the form of a certified check or cashier's check made payable to the "State of Missouri." The check and signed copies of the AOC shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- D. The Whitesides, in compromise and satisfaction of the Department claims relating to the above-referenced violations, agree, without admitting liability or fault, to pay a civil penalty in the amount of twenty thousand one hundred and seventy dollars and twenty-four cents (\$20,170.24). The Department and the Whitesides agree that fifteen thousand one hundred and seventy dollars and twenty-four cents (\$15,170.24) shall be suspended on the condition the Whitesides comply with all requirements and conditions contained in the AOC. The payment shall be in the form of a certified

check or cashier's check made payable to "Hickory County Treasurer, as custodian of the Hickory County School Fund." The check in the amount of five thousand dollars and no cents (\$5,000.00) is due and payable upon execution of this AOC by the Whitesides. The check and signed copies of the AOC shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- E. Messrs. Routh and Kobe, in compromise and satisfaction of the Department claims relating to the above-referenced violations, agree, without admitting liability or fault, to pay a civil penalty in the amount of five thousand dollars and no cents (\$5,000.00). The Department and Messrs. Routh and Kobe agree that three thousand dollars and no cents (\$3,000.00) shall be suspended on the condition that Messrs. Routh and Kobe comply with all requirements and conditions in the AOC. The payment shall be in the form of a certified check or cashier's check made payable to "Hickory County Treasurer, as custodian of the Hickory County School Fund." The check in the amount of two thousand dollars (\$2,000.00) is due and payable upon execution of this AOC by Messrs. Routh and Kobe. The check and signed copies of the AOC shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- F. Upon determination that the Whitesides and/or Messrs. Kobe and Routh failed to meet the terms of this AOC, including the schedules described in paragraphs G through P, the Department shall send a written demand for the suspended penalty to the Whitesides and/or Messrs. Kobe and Routh. The Whitesides and/or Messrs. Kobe and Routh shall have fifteen (15) days from receipt of the written demand to submit the suspended penalty which shall be delivered to:

Accounting Program

Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- G. Immediately upon the effective date of this AOC, the Whitesides shall pump and haul wastewater from the lagoons to a WWTF with the capacity to accept the load so as to prevent the lagoons from discharging. The Whitesides shall continue pumping and hauling wastewater from the Lagoon to a WWTF with the capacity to accept the load so as to prevent a discharge from the Lagoon until Phase I of the RV Park and Lucky's are connected to a permitted WWTF with the capacity to adequately treat the load, or a new WWTF is built. The Whitesides shall maintain pumping records and receipts and shall make these available to the Department on request. The pumping records shall include the date wastewater is pumped, number of gallons pumped, and the name of the permitted facility accepting the wastewater.
- H. Within thirty (30) days of the effective date of this AOC, the Whitesides shall submit to the Department, for review and approval, a closure plan for the lagoons developed in accordance with Department Guidelines, described in Standard Conditions for National Pollutant Discharge Elimination System (NPDES) Permits, Part III, Section I, under Closure Requirements.
- I. If the Department comments on and/or requests modification of the closure plan, the Whitesides shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on and resubmit the engineering report within fifteen (15) days of receipt of the Department's comments.
- J. Within one hundred eighty (180) days of the date the Department issues a CP, the Whitesides shall complete all construction in accordance with the CP.
- K. Messrs. Routh and Kobe agree to connection of Lucky's wastewater to the sandfilter immediately upon completion of construction.
- L. The Whitesides shall comply with all conditions of the Permit as well as submit future DMRs and annual sludge reports in a complete and timely manner pursuant to Permit number MO-0120511. The first sludge report shall be due on or before January 28, 2013,

as described in Standard Conditions for National Pollutant Discharge Elimination System (NPDES) Permits, Part III, Section K.

- M. Within sixty (60) days of connection of Phase I of the RV Park and Lucky's to the sandfilter, the Whitesides shall complete closure of the lagoons in accordance with the Department approved closure plan as referenced in paragraph H.
- N. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed on time, the Whitesides shall notify the Department by telephone or electronic mail, identifying: i) the deadline that will not be completed; ii) the reason for failing to meet the deadline; iii) and a proposed extension to the deadline. Within five (5) days of notifying the Department, the Whitesides 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 Whitesides' right to request an extension and may be grounds for the Department to deny the Whitesides an extension.
- O. Should the Whitesides fail to meet the terms of this AOC, including any of the deadlines set out in paragraphs G through M above, the Department may impose stipulated penalties and the Whitesides agree to pay such stipulated penalties, in the following amounts:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500 per day
31 to 90 days	\$1,000 per day
91 days and above	\$2,500 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "State of Missouri (Hickory County School Fund)." Any such stipulated penalty shall be paid within ten (10) days of demand by the Missouri Department of Natural Resources and shall be delivered to:

Accounting Program
Missouri Department of Natural Resources

P.O. Box 477
Jefferson City, MO 65102-0176

- P. Nothing in this AOC forgives the Whitesides and/or Messrs. Routh and Kobe from future noncompliance with the laws of the state of Missouri, nor requires the Department or State of Missouri to forgo pursuing by any legal means any noncompliance with the laws of the State of Missouri.
- Q. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they expressed or implied, oral or written, except those that are expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, expressed or implied.
- R. The effective date of the AOC shall be the date the Department signs the Order.
- S. The Whitesides agree to comply with the terms and conditions of their Permit, the Law, Chapter 644, RSMo, and the implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC number 2011-WPCB-1164, the Whitesides and/or Messrs. Routh and Kobe waive any right to appeal, seek judicial review, or otherwise challenge this order pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC number 2011-WPCB-1164 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

VI. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions pertinent to wastewater operations outlined in this AOC shall be directed to:

Ms. Kristi Savage-Clarke
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176

Jefferson City, MO 65102-0176

Agreed to and Ordered this 12th day of July, 2012

for Alan J. Reinkemeyer
Alan J. Reinkemeyer, Acting Director
Division of Environmental Quality
Missouri Department of Natural Resources

Agreed to and Ordered this 11 day of June, 2012

Shelly Whiteside
Dale and Shelly Whiteside
Dale and Shelly Whiteside, Owners
Whiteside Hidden Acres RV Park

Agreed to and Ordered this 11 day of June, 2012

Nathan Routh
Nathan Routh, Owner
Lucky's Restaurant and Sports Bar

Agreed to and Ordered this 11 day of June, 2012

Douglas Scott Kobe
Douglas Scott Kobe, Owner
Lucky's Restaurant and Sports Bar

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

901 North Fifth Street
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Refaat Mefrakis, Chief
NPDES Permits & Engineering Section
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P.O. Box 176
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Ms. Janet Pointer
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Mr. Buddy Bennett, Commissioner
Missouri Clean Water Commission
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Ms. Wallis Warren, Commissioner
Missouri Clean Water Commission
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