

tributary to Hocum Hollow pursuant to Missouri State Operating Permit number MO-0093653.

- B. On April 11, 2008, the Department issued permit number MO-0093653 for the lagoon serving Arbor Place and this permit will expire by its own terms on April 10, 2013. Permit number MO-0093653 requires effluent from the lagoon to comply with final effluent limitations for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) with additional monitoring for Ammonia. On September 19, 2012, the Department received an application to renew permit number MO-0093653 from Benchmark.
- C. Tributary to Hocum Hollow and Hocum Hollow are classified as waters of the state as defined by Section 644.016(26) RSMo.
- D. On November 18, 2010, Benchmark entered into a Settlement Agreement with the Department and the Missouri Attorney General's Office to resolve violations of the MCWL, occurring at Arbor Place since 2007. Pursuant to this Settlement Agreement, Benchmark agreed to complete all upgrades and improvements to the lagoon in accordance with Department approved plans and specifications in the construction permit within one hundred eighty (180) days of the date the Department issues the construction permit. On December 15, 2011, the Department issued construction permit CP0001141 to Benchmark for the replacement of the existing lagoon.
- E. On September 4, 2012, the Department received correspondence from Cole Engineering, Inc. explaining that Arbor Place is intending to expand from 78 beds to 121 beds. Due to this change, the design flow of the lagoon will be increased from 7,800 gallons per day to 12,100 gallons per day, which requires Benchmark to submit an Antidegradation submittal to the Department, and Benchmark will not be closing the existing lagoon, as originally intended under the Settlement Agreement.
- F. On November 7, 2012, the Department received an Antidegradation submittal prepared pursuant to the applicable Antidegradation Rule and Implementation Procedure for the State of Missouri from Cole Engineering. This Antidegradation submittal is currently being reviewed by the Department's Antidegradation unit.
- G. Department records indicate that since November of 2010, the effluent discharging from the facility exceeded its permitted limitations for BOD in June of 2012 and exceeded its permitted limitations for TSS in March and June of 2012. Department records also indicate that several Discharge Monitoring Reports (DMRs) have not been received (see Table 1).

Table 1

Discharge Monitoring Report Violations		
Monitoring End Date	Violation	Parameter
6/30/2012	Limit value exceeded	Biochemical Oxygen Demand (BOD)
	Limit value exceeded	Total Suspended Solids (TSS)
3/31/2012	Limit value exceeded	Total Suspended Solids (TSS)
1/31/2012	Non-Receipt	Flow, in conduit or thru treatment plant
3/31/2010	DMR Non-Receipt	Ammonia (as N) + unionized ammonia
	DMR Non-Receipt	Biochemical Oxygen Demand (BOD)
	DMR Non-Receipt	Flow, in conduit or thru treatment plant
	DMR Non-Receipt	pH
	DMR Non-Receipt	Temperature, water deg. Fahrenheit
	DMR Non-Receipt	Total Suspended Solids (TSS)
2/28/2010	DMR Non-Receipt	Flow, in conduit or thru treatment plant
1/31/2010	DMR Non-Receipt	Flow, in conduit or thru treatment plant
12/31/2009	DMR Non-Receipt	Ammonia (as N) + unionized ammonia
	DMR Non-Receipt	Biochemical Oxygen Demand (BOD)
	Non-Receipt	Flow, in conduit or thru treatment plant
	DMR Non-Receipt	pH
	DMR Non-Receipt	Temperature, water deg. Fahrenheit
	DMR Non-Receipt	Total Suspended Solids (TSS)
11/30/2009	Non-Receipt	Flow, in conduit or thru treatment plant
10/31/2009	Non-Receipt	Flow, in conduit or thru treatment plant

H. Section 6443076.1 RSMo. makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

III. CITATIONS AND CONCLUSIONS OF LAW

The Department alleges that the following violations of the MCWL and its implementing regulations occurred at the lagoon serving Arbor Place:

1. Failed to submit complete and timely quarterly DMRs as required in Part "A" of Missouri State Operating Permit number MO-0093653, in violation of Section 644.0761.1 RSMo and 10 CSR 20-7.015(9)(A)1;
2. Failed to operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions, in violation of Section 644.0761.1 RSMo;
3. Failed to comply with the effluent limitations contained in Part 'A' of Missouri State Operating Permit number MO-0093653, in violation of Sections 644.051.1(3) and 644.076.1 and 10 CSR 20-7.015(4); and

4. Placed or caused or permitted to be placed a water contaminant in a location where it is reasonably certain to cause pollution to waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo;

IV. AGREEMENT

- A. The Department and Benchmark, desire to amicably resolve all claims that may be brought against Arbor Place for violations alleged above in Section III, Citations and Conclusions of Law, without Benchmark admitting to the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets, or real or personal property, shall not affect the responsibilities of Benchmark under this AOC.
- C. Within fifteen (15) days of the effective date of this AOC, Benchmark shall submit to the Department for review and approval the following:
 - i. A written explanation of why effluent from the lagoon was not able to meet the permitted effluent limitations for BOD and TSS in March and June of 2012 as required by permit number MO-0093653.
 - ii. All the missing DMRs. If Benchmark is not able to submit the missing DMRs, Benchmark shall submit a written response explaining why the DMRs are not available.
- D. Benchmark shall submit to the Department complete and timely DMRs on or before the 28th day of the month following the reporting period as required by "Part I, Section A.1" Standard Conditions of permit number MO-0093653.
- E. In the interim, until the new or upgraded lagoon is completed, Benchmark shall operate and maintain the existing lagoon at all times so as to produce the best effluent quality possible and comply with the terms and conditions of the permit. All units or components of the existing lagoon shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment and the repair of the lagoon;
- F. Benchmark shall complete the following:
 1. Within fifteen (15) days receipt of Department comments on the Antidegradation submittal, respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the Antidegradation submittal;
 2. Within ninety (90) days of the date the Department approves the Antidegradation submittal, submit to the Department for review and approval,

a complete application for construction permit including applicable fees, design summary, and plans and specifications signed and sealed by a professional engineer licensed to practice in the State of Missouri for the upgrades or replacement of the facility which will enable the effluent to comply with all applicable final effluent limitations contained in the operating permit. The construction permit application shall also include a request to public notice the Antidegradation review and the modified operating permit;

3. Within fifteen (15) days receipt of Department comments on the facility's construction permit application, respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the construction permit application;
4. Within one hundred and eighty (180) days of the effective date of the construction permit, complete construction of the approved upgrades; and
5. Within thirty (30) days of completing construction, submit to the Department a Statement of Work Completed Form, signed, sealed and dated by a professional engineer registered in the State of Missouri certifying that the project is substantially complete and operable in accordance with Department approved plans and specifications. In addition, a complete application requesting the issuance of the modified operating permit must be submitted at this time.

G. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, Benchmark 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, Benchmark 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 Benchmark's right to request an extension and may be grounds for the Department to deny Benchmark an extension.

H. Benchmark shall fully implement all of the requirements of this AOC. Should Benchmark fail to meet the terms of this AOC, including the deadlines set out in Paragraphs C through F, Benchmark shall be subject to 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 Jefferson County Treasurer, as custodian of the Jefferson 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

- I. The stipulated penalties provided for in this AOC shall be in addition to any other rights, remedies or sanction available to the Department for Benchmark's violation of this AOC or applicable law.
 - J. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties with respect to the matters addressed herein, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous related memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
 - K. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.
 - L. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to Benchmark for their records.
 - M. Benchmark shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.
- V. RIGHT OF APPEAL
- By signing this AOC, Benchmark consents to and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

VI. CORRESPONDENCE AND DOCUMENTATION

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

Ms. Joan Doerhoff
Compliance and Enforcement Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 7th day of January, 201~~2~~³

John Madras

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

Agreed to and Ordered this _____ day of _____, 2012

Bailey R Sells

Bailey Sells, Vice President
Benchmark Healthcare of Festus, Inc.

Copies of the foregoing served by certified mail to:

Nicole K. Jobe, General Council
Benchmark Healthcare Management, LLC
1795 Clarkson Road, Suite 200
Chesterfield, MO 63017

CERTIFIED MAIL

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
11201 Renner Blvd.
Lenexa, KS 66219

Mr. Chris Wieberg, Chief
Operating Permits Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Ms. Dorothy Franklin, Director
Saint Louis Regional Office
Missouri Department of Natural Resources
7545 S. Lindbergh, Suite 210
St. Louis, MO 63125

Dr. Samuel M. Hunter, Chair
Missouri Clean Water Commission
P O Box 984
216 Tanner Street
Sikeston, MO 63801

Mr. Ben A. "Todd" Parnell, III, Vice Chair
Missouri Clean Water Commission
Drury University
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Mr. John Cowherd, Commissioner
Missouri Clean Water Commission
1303 Deer Lane
Mount Vernon, MO 65712

Mr. Samuel D. Leake, Commissioner
Missouri Clean Water Commission
41690 Harrison Trail
Perry, MO 63462

Ms. Wallis Warren, Commissioner
Missouri Clean Water Commission
2671 Jefferiesburg Road
Beaufort, MO 63013

Mr. Dennis Wood, Commissioner
Missouri Clean Water Commission
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284 Lillian Lane
Kimberling City, MO 65686

Mr. Buddy Bennett, Commissioner
Missouri Clean Water Commission
1922 N Main Street
Higginsville, MO 64037-1527