

County, Missouri. The facility is a four-cell aerated lagoon that receives and treats wastewater generated by 219 single family homes in the Hillcrest Manor Subdivision. The facility has a design flow of 92,126 gallons per day, an actual flow of 41,680 gallons per day, and a design population equivalent of 922. Effluent discharges from the facility through outfall #001 to a tributary to Williams Creek pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) number MO-0088072.

- B. Tributary to Williams Creek and Williams Creek are classified as waters of the state as defined by Section 644.016(27) RSMo.
- C. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- D. MSOP number MO-0088072 was issued to Blomeyer Investments AKA M&W Development Company on December 8, 2006, but was transferred to Brandco on October 12, 2007. The MSOP expired by its own terms on December 7, 2011. The MSOP requires Brandco to sample the effluent discharging from outfall #001 of each lagoon and chemically analyze the effluent sample for the water contaminants listed in Part "A" once a quarter. The MSOP also requires the effluent to comply with the effluent limitations contained in Part "A" of the MSOP and requires the results of analysis to be submitted to the Department on monthly discharge monitoring reports (DMRs) by the 28th day of the month following the reporting period.
- E. The MSOP includes a schedule of compliance (SOC) for Brandco to complete improvements to the facility that would enable the effluent to comply with final effluent limitations for Fecal coliform and if appropriate Total Residual Chlorine (TRC) by December 6, 2011.
- F. On April 8, 2010, the Department conducted an inspection of the facility and observed that outfall #001 was partially clogged with algae, the rocks in the splash area below outfall #001 were black; and excessive vegetation was growing on the lagoon berms, which had been damaged by erosion. Staff also noted that Brandco had not employed a certified operator to operate the facility as required by CSR 20-9.020 (2) (B) (D). Due to the violations found during the April 8, 2010, inspection, the Department issued a Letter of Warning (LOW) with the inspection report to Brandco on April 16, 2010.
- G. On April 12 and May 16 of 2011, the Water Protection Program's Budget and Fees Unit issued a LOW to Brandco for failing to pay the Annual MSOP fee. On June 22, 2011, the Water Protection Program's Budget and Fees Unit issued a

Notice of Violation (NOV) to Brandco for failing to pay the Annual MSOP fee. For the years 2011 and 2012, Brandco owes \$5,000.00 in fees and late penalties.

- H. On May 9, 2012, the Department conducted an inspection of the facility and observed that the aerator in the first cell of the lagoon was not functional, the water in the lagoon appeared to be septic, excessive vegetation was growing on the lagoon berms, less than two (2) feet of freeboard in the third cell of the lagoon, and a turtle shell lodged in the effluent pipe. Department records indicated that Brandco had not completed improvements to the facility and did not have a certified wastewater operator to operate the facility as required by CSR 20-9.020 (2) (B and D). During the inspection, staff collected a sample of the effluent and chemical analysis of the sample showed the concentration of TRC in the sample was 0.26 mg/L, which exceeded the permitted daily maximum of 0.019 mg/L for TRC. Due to the violations found during the May 9, 2012, inspection, the Department issued a NOV to Brandco with the inspection report on June 12, 2012.
- I. On June 14, 2012, the Department received an application to renew MSOP number MO-0088072 from Brandco.
- J. 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

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed by Brandco are as follows:

1. 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, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.;
2. Failed to upgrade facilities as required in Part "D" of MSOP number MO-0088072, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A);
3. Failed to retain a certified operator to supervise the operation and maintenance of the wastewater treatment facility, in violation of Section 644.076.1, RSMo, and 10 CSR 20-9.020(2)(B) and (D); and
4. Failed to apply for renewal of the MSOP at least one hundred eighty (180) days before expiration of MSOP number MO-0088072, in violation of Sections 644.051.10 and 644.076.1, RSMo, and 10 CSR 20-6.010(5)(C).

IV. AGREEMENT

- A. The Department and Brandco desire to amicably resolve all claims that may be brought against Brandco for violations alleged above in Section III, Citations and Conclusions of Law, without Brandco 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 Brandco under this AOC.
- C. Brandco in compromise and satisfaction of the Department claims relating to the above-referenced violations agrees, without admitting liability or fault, to pay a civil penalty in the amount of sixteen thousand sixteen dollars and seventy-five cents (\$16,016.75). The Department and Brandco agree that sixteen thousand sixteen dollars and seventy-five cents (\$16,016.75) of the civil penalty shall be suspended for a period of three (3) years on the condition that Brandco complies with all requirements and conditions contained in this AOC.
- D. Upon determination that Brandco has failed to meet the terms of this AOC, including the schedule set forth in paragraphs D through M, the Department shall send a written demand for the civil penalty in the amount of sixteen thousand sixteen dollars and seventy-five cents (\$16,016.75) to Brandco. Brandco shall have fifteen (15) days from its 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

- E. In the interim, until Brandco eliminates the discharge by connection to a permitted wastewater treatment facility or completion of upgrades to the facility, Brandco shall operate and maintain the existing facility at all times so as to produce the best effluent quality possible and comply with the terms and conditions of the MSOP. All units or components of the existing facility 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 facility;

- F. Brandco shall pay the Department the aggregate fees in the amount of five thousand dollars (\$5,000.00) in nine (9) monthly payments as follows:
1. Five hundred fifty-five dollars and fifty-six cents (\$555.56) shall be paid within sixty (60) days of the effective date of the AOC.
 2. Five hundred fifty-five dollars and fifty-six cents (\$555.56) shall be paid on the first day of each consecutive month for eight (8) months.

Brandco shall submit the checks made payable to "Missouri Department of Natural Resources" and include the MSOP number, Brandco's name, and the facility name on the check for identification purposes to the following address

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

- G. Within sixty (60) days of the effective date of this AOC, Brandco shall submit, to the Department for review and approval; an engineering report prepared by a professional engineer licensed to practice in the State of Missouri. The engineering report shall evaluate the current condition of the facility and recommend improvements, replacement or closure of the facility that will achieve compliance with the applicable MSOP and the MCWL. The engineering report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8;
- H. Within fifteen (15) days receipt of comments from the Department on the engineering report, Brandco shall respond to and adequately address to the Department's satisfaction all Department comments;
- I. Within sixty (60) days of the date the Department approves the engineering report, Brandco shall submit to the Department for review and approval, a complete application for construction permit including the applicable fee, design summary, 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 MSOP;
- J. Within fifteen (15) days receipt of Department comments on the facility's construction permit application, Brandco shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the construction permit application;
- K. Brandco shall complete construction of the approved upgrades as approved by the Department on or before April 1, 2014;

- L. Within thirty (30) days of completing construction, Brandco shall 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 complete and operable in accordance with Department approved plans and specifications. In addition, a complete application requesting the issuance of the modified MSOP must be submitted at this time.
- M. Within thirty (30) days of completing construction, of the improvements, Brandco shall achieve compliance with the final effluent limitations contained in Part "A" of the MSOP.
- N. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, Brandco 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, Brandco 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 Brandco's right to request an extension and may be grounds for the Department to deny Brandco an extension.
- O. Brandco shall fully implement all of the requirements of this AOC. Should Brandco fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs F-L, Brandco 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 the "Cape Girardeau County Treasurer, as custodian of the Cape Girardeau 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

- P. Nothing in this AOC forgives Brandco from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to

forego pursuing by any legal means, for any noncompliance with the laws of the State of Missouri. 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.

- Q. 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.
- R. 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 Brandco for their records.
- S. Brandco shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT TO APPEAL

By signing this AOC, Brandco consents to its terms 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. Kristi Savage-Clarke
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 28th day of February, 2013.

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

Agreed to and Ordered this 16 day of Feb, 2013.

Bobby Brandon
Bobby Brandon, Owner
Brandco Investments, LLC
Hillcrest Utility, Co.

Copies of the foregoing served by certified mail to:

Mr. Bobby Brandon
Brandco Investments, LLC
PO Box 1685
Cape Girardeau, MO 63702-1685

CERTIFIED MAIL

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

Mr. Jackson Bostic, Director
Southeast Regional Office
Missouri Department of Natural Resources
2155 N. Westwood Blvd.
Poplar Bluff, MO 63901

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
900 N. Benton
Springfield, MO 65802

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
P.O. Box 112
284 Lillian Lane
Kimberling City, MO 65686

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

