IN THE CIRCUIT COURT OF JOHNSON COUNTY, MISSOURI

FILED
JOHNSON COUNTY, MO
OCT 23 2013
STEPHANIE ELKINS
CLERK - CIRCUIT COURT

STATE OF MISSOURI ex rel. Attorney General Chris Koster, and the Missouri Department of Natural Resources,	)	
Plaintiff,	)	
v.	)	Case No. 13JO-CV00163
JEFFREY and MARY SHUEY, d/b/a JLC Trailer Court	)	
Defendants.	)	

CONSENT JUDGMENT

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendants, Jeffrey Shuey and Mary Shuey d/b/a JLC Trailer Court, 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 Defendants violated 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.

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, having consented to the entry of this Consent Judgment, 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 the Missouri Clean Water Law, §§ 644.006 through 644.150 RSMo, and its implementing. 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. "Defendants" means Jeffrey Shuey and Mary Shuey d/b/a JLC Trailer Court.

c. "Department" means the Missouri Department of Natural Resources.

d. "Facility" means the wastewater treatment lagoon located at JLC Trailer Court, 248 SW Highway 13, Warrensburg, MO 64093.

e. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.

f. "Commission" means 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 § 644.076.1 RSMo.[1] The subject matter of this action involves the Missouri Clean Water Law, Chapter 644 RSMo, and its implementing regulations. The Defendants' actions alleged in this petition took place in Johnson County; therefore, venue is proper pursuant to § 644.076.1 RSMo.

IV. Parties Bound

4. The provisions of this 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 parties to this action or their agents, servants, employees, heirs, successors,

[1] All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

and assigns. Defendants 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, Defendants are 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.

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, Defendants' facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

VI. Injunctive Relief

7. Defendants agree and are ordered to comply with all State of Missouri environmental statutes, the Missouri Clean Water Law (Chapter 644 RSMo), and all implementing regulations for any and all future activities in the State of Missouri.

8. Defendants shall immediately cease all discharges from the Facility and pump and haul wastewater from the lagoon to a permitted wastewater treatment facility with the capacity to treat the wastewater. The Defendant agrees to continue pumping and hauling wastewater, as necessary, to prevent any overflows or discharges of sewage to waters of the state until a wastewater collection and treatment system approved by the

Missouri Department of Natural Resources has been constructed for JLC Trailer Court or JLC Trailer Court is connected to a Department-approved wastewater treatment system. Additionally, Defendants agree to maintain pumping and hauling receipts and make these receipts available to the Department by the 10th day of the month following the month that the receipts are written. The receipts shall include the date that the wastewater was pumped; number of gallons pumped; the name of the wastewater hauler and the permitted facility accepting the wastewater. If the Facility produces no discharge, then the Defendants shall submit photographs sufficient to prove the absence of discharge and a signed statement attesting to the absence of discharge in lieu of pumping and hauling receipts. If the Department determines that the photographs are insufficient to verify the absence of discharge, then the Department shall notify Defendant of such, and the Defendant shall pump and haul as necessary until sufficient evidence of no discharge, as determined by the Department, is provided to the Department.

9. Defendants shall complete the schedule of compliance in either subparagraph A or B. All required reports, plans and specifications shall be prepared and sealed by a professional engineer licensed to practice in the State of Missouri and developed pursuant to the requirements of 10 CSR 20-8.020:

A. Connecting to Permitted Treatment Facility Offsite.

i. Within ninety (90) days of the Court's entry of this Default Judgment, Defendants shall submit to the Department for review and comment an engineering report, plans, and specifications, and a complete application for sewer extension to connect JLC Trailer Court wastewater by sewer line to a DNR-permitted wastewater treatment facility located offsite. Defendants shall submit to the Department along with the report a letter from the continuing authority of the approved offsite wastewater treatment facility stating its commitment to accept the wastewater from JLC Trailer Court. The engineer's report shall include a plan for closure of the Facility currently serving JLC Trailer Court that complies with Standard Conditions for National Pollutant Discharge Elimination System (NPDES) Permits, Part III, Section I, Closure Requirements.

ii. Within fifteen (15) days of receiving the Department's comments on the engineering report, plans, and specifications, application for sewer extension, and lagoon closure plan, Defendants shall respond to and adequately

address, to the Department's satisfaction, all of the Department's comments.

iii. Within one hundred eighty (180) days of the Department's issuance of the construction permit, Defendants shall complete construction of the sewer extension.

iv. Within thirty (30) days of completing construction, Defendants shall submit to the Department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer certifying that the project is complete and operable in accordance with Department approved plans and specifications.

v. Within ninety (90) days of completing construction the sewer extension, Defendants must complete closure of the Facility according to the Department-approved closure plan.

B. Replacement of Facility

i. Within sixty (60) days of the Court's entry of this Default Judgment, submit to the Department for review and comment a complete Antidegradation submittal prepared pursuant to the applicable Antidegradation Rule and Implementation Procedure for the State of Missouri. The

Antidegradation submittal must include a Division of Geology and Land Survey Geohydrologic Evaluation that has been completed less than one year before the Antidegradation submittal.

ii. 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.

iii. Within sixty (60) days of Department approval of the Antidegradation Review, submit to the Department for review and approval a complete application for an operating permit with applicable fee, and an engineering report. The engineering report shall include a comprehensive evaluation of the current condition of the wastewater collection system, and wastewater treatment options and recommendations for a new wastewater treatment facility for the JLC Trailer Court so that effluent from the facility will comply with the Missouri Clean Water Law and its implementing regulations. The engineering report must also include a lagoon closure plan

for the existing Facility that complies with Standard Conditions for National Pollutant Discharge Elimination System (NPDES) Permits, Part III, Section I, Closure Requirements.

iv. Within fifteen (15) days receipt of Department comments on the engineering report and lagoon closure plan, Defendants shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments.

v. Within thirty (30) days of the date the Department approves the engineering report and lagoon closure plan, Defendants shall submit to the Department for review and approval, a complete application for a 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 replacement of the Facility that will enable the effluent to comply with the Missouri Clean Water Law and its implementing regulations.

vi. Within fifteen (15) days receipt of Department comments on the construction permit application, Defendants shall

respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the construction permit application.

vii. Within one hundred eighty (180) days of issuance of the construction permit, Defendants shall complete construction in accordance with Department-approved plans and specifications in the construction permit, and submit to the Department a complete application requesting issuance of the operating permit. Additionally, Defendants shall submit a Statement of Work Completed Form, signed, sealed and dated by a professional engineer registered in the State of Missouri certifying that the project has been completed in accordance with the Department-approved plans and specifications.

viii. Within thirty (30) days of completing construction of the new wastewater treatment facility, Defendants shall achieve compliance with the Missouri Clean Water Law and its implementing regulations and effluent limitations contained in Part "A" of the operating permit.

VII. Information Collection and Retention

10. 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 Defendants or their representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendants' compliance with this Consent Judgment.

11. Upon request, Defendants shall provide the State, through its authorized representatives, splits of any samples taken by Defendants.

12. Until five years after the termination of this Consent Judgment, Defendants 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 Defendants' performance of their 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, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

13. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants 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, Defendants shall deliver any such documents, records, or other information to the State. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to

the requirements of this Consent Judgment shall be withheld on grounds of privilege.

14. 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 Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

VIII. Civil Penalty

15. Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty of $20,400. Defendants hereby authorize entry of this judgment against them and in favor of the State of Missouri for this sum.

16. Suspended Civil Penalty. $13,200 of the total penalty of $20,400 shall be suspended upon the condition that Defendants comply with the Missouri Clean Water Law and its implementing regulations for a period of 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 Defendants. Defendants shall have fifteen (15) days from its receipt of the written demand to submit the

suspended penalty in the manner described in paragraph 17. The suspended penalty provided in this Consent Judgment shall be in addition to any other rights, remedies, or sanction available to State for Defendants' violation of this Consent Judgment or applicable law.

17. Payment Plan. Defendants agree to pay the $7,200 unsuspended portion of the civil penalty in six (6) separate payments in equal amounts. Within ninety (90) days of entry of this Consent Judgment, Defendants shall make the first payment of $1200. Defendants shall make all remaining $1200 payments on a quarterly basis, by the 1st day of each third succeeding month. Defendants shall make all payments by submitting a check made payable to the "*State of Missouri (Johnson County)*" to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. If Defendants fail to make any payment within ten calendar days of the due date, the Defendants shall become immediately liable for payment of the entire unpaid amount, including the suspended penalty described in paragraph 16.

IX. Stipulated Penalties

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

a. $50 per day for each day of each violation up to thirty

days.

b. $100 per day for each day of each violation, from thirty-one days to sixty days.

c. $200 per day for each day of each violation, beyond sixty days.

19. Stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Defendants shall pay stipulated penalties by check made payable to the "*State of Missouri (Johnson 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.

20. 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. Modification

21. 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.

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

MARY SHUEY

Mary Shuey

Date: 8-8-2013

JEFFREY SHUEY

Jeffrey S. Shuey

Date: 8-8-13

MISSOURI ATTORNEY GENERAL'S OFFICE

By: _____

Jeremy D. Knee
Assistant Attorney General

Date: 8-13-13

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: for Steven Tuler

Leanne Tippett Mosby, Director
Division of Environmental Quality

Date: August 16, 2013

SO ORDERED.

_____

Circuit Judge

Date: 10-23-13