

IN THE CIRCUIT COURT OF MILLER COUNTY, MISSOURI

FILED

FEB 07 2013

GENISE BUECHTER
CIRCUIT CLERK
MILLER COUNTY, MO

STATE OF MISSOURI ex rel.)
Chris Koster, the Attorney General,)
and the Missouri Department of)
Natural Resources,)

Plaintiff,)

v.)

Case No. 13ml-cc00016

G AND G OZARK MOTOR)
SPORTS, INC., d/b/a)
LAKE OZARK SPEEDWAY,)
GUNDAKER ENTERPRISES, INC.,)
G. KEVIN GUNDAKER, and)
GORDON GUNDAKER,)

Defendants.)

CONSENT JUDGMENT

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendants G and G Motor Sports, Inc., G. Kevin Gundaker, Gundaker Enterprises, Inc., and Gordon A Gundaker, Jr., 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 Chapter 644 RSMo, and the regulations adopted thereunder. 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 G and G Ozark Motor Sports, Inc., Gundaker Enterprises, Inc., G. Kevin Gundaker, and Gordon A. Gundaker, Jr..

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

d. "Facility" means Lake Ozark Speedway and the wastewater treatment facility at 50 Twiggy Lane, Eldon, Missouri, 65026.

e. "WWTF" refers to the wastewater treatment system located at 50 Twiggy Lane, Eldon, Missouri, 65026.

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

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to § 644.076.1 RSMo ¹. Venue is proper in this court pursuant to § 644.076.1 RSMo because the Defendants' conduct giving rise to this action took place in Miller County.

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

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

parties to this action or their agents, servants, employees, heirs, successors, 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.

7. 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.

VI. Injunctive Relief

8. Defendants agree and are ordered to comply with all Missouri Clean Water Laws in Chapter 644 and all implementing regulations for any and all future activities in the State of Missouri.

9. Defendants further agree:

a. Within 10 days of the entry date of this Consent Judgment, Defendants must complete and submit an approvable application to renew the current Missouri State Operating Permit, along with proof of ownership of the Lake Ozark Speedway, to the Department. The Defendants agree to comply with all conditions of the Permit as well as submit future Quarterly Emergency DMRs, Land Application Operational Monitoring Reports, and Irrigated Wastewater Monitoring Reports and Annual Operating Reports as required in part "A" of Permit No. MO-0131377.

b. Within 30 days of the entry date of this Consent Judgment, the Defendants shall submit a complete Operation and Maintenance ("O&M") Plan for the Lagoon to the Department for review and approval as required in part "B", standard conditions, and part "D", Schedule of Compliance, of permit No. MO-0131377. The O&M Plan must include a description of the specific method that will be used to land apply excess wastewater from the Lagoon using irrigation.

c. Within 90 days of the entry date of this Consent Judgment, the Defendants must complete the following maintenance work on the Lagoon and wastewater irrigation system:

i. Remove all woody vegetation from the berms of all three cells of the Lagoon as required in 10 CSR 20-8.020(13)(A)(D) and G;

ii. Remove all woody vegetation from the wastewater land application field as required in 10 CSR 20-8.020(13)(A)(D) and G;

VII. Civil Penalty

10. Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty of \$5,000.00. Defendants hereby authorize entry of this joint and several judgment against them and in favor of the State of Missouri for this sum.

11. The parties further agree that \$2,500.00 of this civil penalty shall be suspended as described in paragraph 13.

12. Defendants agree to pay the \$2,500.00 up-front civil penalty by check made payable to the "*State of Missouri (Miller County)*" within 30 days of the entry of this Consent Judgment by mailing same to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

13. Suspended Civil Penalty. \$2,500.00 of the total penalty of \$5,000.00 shall be suspended upon the condition that Defendants comply 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 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 12. 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.

VIII. Stipulated Penalties

14. 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. \$100.00 per day for each day of each violation up to thirty days.

B. \$250.00 per day for each day of each violation, from thirty-one days to sixty days.

C. \$500.00 per day for each day of each violation, beyond sixty days.

15. 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 (Miller 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.

16. 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.

IX. Modification

17. 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.

X. Costs

18. Defendants shall pay all court costs in this action.

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

G AND G OZARK MOTOR SPORTS, INC.

By: 
G. Kevin Gundaker, President

Date: 12/13/12

GUNDAKER ENTERPRISES, INC.

By: 
Gordon, A. Gundaker, Jr., President

Date: 12/13/12

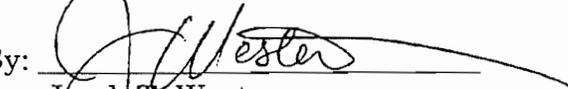
By: 
G. Kevin Gundaker, in individual capacity

Date: 12/13/12

By: 
Gordon, A. Gundaker, in individual capacity

Date: 12/13/12

MISSOURI ATTORNEY GENERAL'S OFFICE

By: 
Jacob T. Westen
Assistant Attorney General

Date: 12.17.12

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Steven Fuller
for Leanne Tippet Mosby, Director
Division of Environmental Quality

Date: JAN - 2 2013

SO ORDERED.

Steven Fuller
Circuit Judge

Date: 2-7-13

STATE OF MISSOURI }
County of Miller } ss.

I, Genise Buechter, Clerk of
the Circuit Court in and for said County, hereby Certify that the
foregoing is a true copy of the original _____

Consent Judgment
therein referred to as the same appears on record in my office.

Witness my hand and the seal of said Court. Done at office in
Tuscumbia this 7th day of February 20 13

GENISE BUECHTER
Clerk of the Court

By Jim Humphrey Deputy