

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI**

RECEIVED

MAY 29 2013

WATER PROTECTION PROGRAM

IN THE MATTER OF:

Oak Ridge Acres,
Wastewater Treatment Facility

SERVE:

Ms. Nancy Helms, President
Oak Ridge Acres Property
Owners Association

No. 2013-WPCB-1235

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) number 2013-WPCB-1214, by the Missouri Department of Natural Resources, is a formal administrative action by the State of Missouri and is being issued because the Oak Ridge wastewater treatment facility is in violation of the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the MCWL Section 644.076.1, RSMo. Litigation may occur without further administrative notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Oak Ridge Properties Owners Association of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. The Oak Ridge Acres Subdivision includes forty-one (41) single family homes, owned by private individuals, with twenty-two (22) homes being used year round. Wastewater from the subdivision is treated by an unpermitted extended aeration wastewater treatment facility that consists of an aeration unit, a settling tank, a clarifier, and a tank for chlorination. Treated effluent from the facility discharges to a

single-cell no-discharge lagoon. The lagoon is located in the SW¼, SE¼, Section 32, Township 41North, Range 21 West, of Benton County. The facility and the lagoon are located within sixty (60) feet of the Lake of the Ozarks which is listed as an impaired water body due to nitrogen and phosphorus. The Lake of the Ozarks is a class L2 lake that has beneficial uses including livestock and wildlife waters, protection of warm water aquatic life, and human health-fish consumption, whole-body-contact class A, and secondary contact recreation.

- B. The Lake of the Ozarks and its tributaries are waters of the state as the term is defined by Section 644.016 (27), RSMo.
- C. Domestic wastes are water contaminants as the term is defined in Section 644.016(24), RSMo.
- D. On August 25, 2010, the Department received an application for an operating permit with applicable fees from the association. On October 7, 2010, the Department sent a letter to the association explaining that the application was incomplete and requested that the association revise and resubmit the application, submit documentation verifying that the association is a valid continuing authority, and submit certification of work completed for the facility by November 2, 2010. On December 10, 2010, the Department received documentation verifying that the association is a valid continuing authority and a revised application for a permit. On January 4, 2011, the application was returned to the association as incomplete due to the lack of a certification of work completed for the wastewater treatment facility.
- E. On September 27, 2011, Department staff conducted an inspection of the facility and documented that the facility was operating without a Missouri State Operating Permit (MSOP). During the inspection, Department staff observed the following conditions: effluent was being chlorinated but did not find dechlorination equipment installed in the facility, there was no location to collect a treated effluent sample prior to discharge, and there was no perimeter fence surrounding the facility or warning signs posted. Department staff also found that there was not a certified operator currently employed by the association to operate and maintain the facility.
- F. On March 8, 2012, the Department issued the association NOV number KCRO2012020307162616 for operating a water contaminant source without a MSOP and placing water contaminants in a location where they are reasonably certain to cause pollution to waters of the state.

III. CITATIONS AND CONCLUSIONS OF LAW

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

1. Since 1989, operated, used or maintained a water contaminant source, wastewater treatment facility, which discharges to the Lake of the Ozarks, waters of the state, without a Missouri State Operating Permit, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A); and
2. 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.

IV. AGREEMENT

- A. The Department and the association desire to amicably resolve all claims that may be brought against the association for violations alleged above in Section III, Citations and Conclusions of Law, without the association 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 the association under this AOC.
- C. The association shall complete upgrades or replacement of its facility that will enable the effluent to comply with the MCWL and its implementing regulations and all conditions. All required reports, plans and specifications shall be prepared and sealed by a professional engineer licensed to practice in the State of Missouri pursuant to the following schedule:
 1. Within fifteen (15) days receipt of Department comments on the association'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;
 2. Within one hundred and eighty days (180) of the Department's issuance of a construction permit, complete construction of approved upgrades; and
 3. Within thirty (30) days of completing construction, submit to the Department a Statement of Work Complete, 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 MSOP must be submitted at this time.
 4. Within thirty (30) days of receiving a MSOP, achieve compliance with the final effluent limitations contained in Part "A" of the MSOP.

- D. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the association 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, the association 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 association's right to request an extension and may be grounds for the Department to deny the association an extension.
- E. Should the association fail to meet the terms of this AOC, including the deadlines for completion of construction set out in paragraph C, the association 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 "Benton County Treasurer, as custodian of the Benton County School Fund." Any such stipulated penalty shall be paid within ten (10) days 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

- F. Nothing in this AOC forgives the association 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, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- G. 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.
- H. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the association for its records.

I. The association 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 number 2013-WPCB-1235, the association 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. Joan Doerhoff, Unit Chief
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 13th day of June, 2013

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

Agreed to and Ordered this 25 day of May, 2013

Nancy Helm
Nancy Helm, President
Oak Ridge Acres Property Owners Association

Copies of the foregoing served by certified mail to:

Ms. Nancy Helm, President CERTIFIED MAIL:
Oak Ridge Acres Property Owners Association
28096 Saddle Road
Warsaw, MO 65355

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. Andrea Collier, Director
Kansas City Regional Office
Missouri Department of Natural Resources
500 NE Colbern Rd.
Lee's Summit, MO 64086

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

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