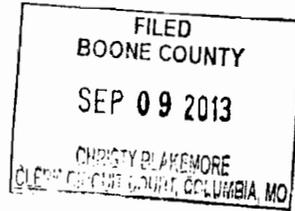


IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI ex rel.,)
Attorney General Chris Koster)
and the Missouri Department)
of Natural Resources,)
)
Plaintiff,)
)
v.)
)
JOHN R. PAYNE and)
)
PAYNE ENTERPRISES, INC.,)
)
Defendants)



Case No. 12BA-CV03059

Consent Judgment

Plaintiff, the State of Missouri, at the relation of Attorney General Chris Koster, the Missouri Department of Natural Resources (Department), and the Missouri Clean Water Commission (Commission) and Defendants John R. Payne and Payne Enterprises, Inc., hereby consent to the entry of this Judgment for the purpose of resolving the issues between them raised by the filing of the State's Petition for Temporary Restraining Order, Preliminary and Permanent Injunction, and Civil Penalties.

The Court has read the Petition, in which the State alleges that Defendants violated the Missouri Clean Water Law Chapter 644 RSMo and its implementing regulations. 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.

This Consent Judgment is made, agreed upon and submitted to the Court for the purpose of settlement only, and upon the condition that the Court approves it in its entirety. In the event the Court does not approve of this Consent Judgment in its entirety and as agreed by the parties, it shall be null and void and have no effect in this or any other proceeding. The parties understand and agree that 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.

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 Amended Petition.

II. Definitions

2. Terms used herein shall have the same meaning as provided in the Missouri Clean Water Law, Chapter 644 RSMo and its implementing regulations. 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" mean John R. Payne and Payne Enterprises, Inc.

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

d. "Plaintiff" or "State" means the state of Missouri on the relationship of Attorney General Chris Koster, the Missouri Department of Natural Resources, and the Missouri Clean Water Commission.

e. "WWTFs" shall mean the three (3) wastewater treatment facilities serving Tower Mobile Home Park in Callaway County; Little City Mobile Home Park in Boone County and Westgate Mobile Home Park in Audrain County, Missouri.

f. "Water Protection Program" or "WPP" means the Water Protection Program of the Missouri Department of Natural Resources.

III. Jurisdiction

3. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to § 644.076.1 RSMo.

IV. Parties Bound

4. The provisions of this Consent 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, 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 and liability for any violations that were or could have been alleged in the lawsuit styled *State of Missouri ex rel. v. David Ott, et al.*, Audrain County, Case No. 10AU-CC000006.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Law or regulations or under federal 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 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 Missouri environmental statutes and implementing regulations for any and all future activities in the State of Missouri.**

8. **At all times in the future, Defendants agree and are ordered to submit to the Department timely, complete and accurate DMRs and Annual**

Operations Reports pursuant to the applicable Missouri State Operating Permit ("MSOPs") for the WWTFs.

9. Until the WWTFs are upgraded, replaced or eliminated, Defendants agree and are ordered to operate and maintain the WWTFs, in compliance with the terms and conditions of the MSOPs. This includes ensuring that all units or components of the WWTFs are maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment or if this requires repairs to the WWTFs to comply with the terms and conditions of the MSOPs.

10. In order to ensure ongoing compliance with the Missouri Clean Water Law, Defendant agrees and is ordered to comply with the Schedules of Compliance set forth in Missouri State Operating Permit Nos. MO-0085936, MO-0045519, and MO-0057363 at all times in the future. Missouri State Operating Permit Nos. MO-0085936, MO-0045519, and MO-0057363 are hereby incorporated into this Consent Judgment as Exhibits A, B, and C, respectively.

11. Defendants agree and are ordered to report any bypasses or Sanitary Sewer Overflows (SSOs) to the Department within 24 hours from the time the Defendants become aware of an SSO or bypass event at the WWTFs. Defendants further agree to provide written notice to the Department within five (5) days from the time the Department becomes

aware of the SSO or bypass and agrees to take immediate action to correct each SSO or bypass.

12. To bring the WWTFs serving Little City Mobile Home Park and Westgate Mobile Home Park into compliance with the Missouri Clean Water Law, Defendants agree and are ordered to implement the following schedule of compliance:

- A. Within ninety (90) days of the entry of this Consent Judgment, Defendants 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 be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8.020 and shall include an evaluation of all existing wastewater collection and WWTFs and propose wastewater treatment options and recommendations that will eliminate bypasses of partially treated wastewater from the WWTFs and enable the effluent discharged from the WWTFs to comply with the applicable MSOPs. In addition, the engineering report shall analyze and identify the adequacy of Little City's and Westgate's earthen berms and make recommendations for any repairs, if necessary and evaluate the WWTF's ability to comply with

final ammonia limits set out in the MSOPs.

- B. If the Department-approved engineering report recommends operational changes and/or maintenance repairs, Defendants shall fully implement all approved recommendations within sixty (60) days of the date the Department approves the engineering report.
- C. If the Department-approved engineering report recommends modifying the WWTFs and /or collection systems, Defendants shall submit to the Department, complete applications for construction permit(s), including the appropriate fee(s) and plans and specifications for construction, prepared by a professional engineer licensed to practice in the State of Missouri.
- D. Within fifteen (15) days receipt of Department comments on the engineering report, Defendants shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the engineering report.
- E. Within one hundred and eighty (180) days of the date the Department issues the construction permit(s) Defendants shall complete construction in accordance with the construction permit(s) and submit a Statement of Work

Completed prepared by a professional engineer licensed to practice in the State of Missouri. Defendants may request an extension of time from the Department to complete construction within thirty (30) days of this deadline. The Department may grant the requested extension at its discretion.

- F. Within thirty (30) days of completion of construction, Defendants shall submit to the Department a complete, approvable application with appropriate fees for modification of the MSOPs as applicable.

I. FORCE MAJEURE

13. "Force majeure," for purposes of this Consent Judgment, is defined as any event arising from causes beyond the reasonable control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors or subcontractors that delays or prevents the performance of any obligation under this Consent Judgment despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate and prevent any potential force majeure event and best efforts to minimize the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure"

does not include unanticipated or increased expenses or costs associated with implementation of this Judgment, changed financial circumstances, or other financial or budgetary issues. Failure to apply for a required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval necessary to meet the requirements of this Consent Judgment, are not Force Majeure events.

14. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Judgment, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to the Department and the Attorney General's Office, within 48 hours of when Defendants first knew that the event might cause a delay. Within seven days thereafter, Defendants shall provide in writing to the Department and the Attorney General's Office an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available

documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

15. If the State agrees that a force majeure event has occurred, the State will agree to extend the time for Defendants to perform the obligation(s) under this Consent Judgment that are affected by the force majeure event for the time necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, by itself, extend the time for performance of any other obligation. The State will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

16. Any notices or submittals required under this section shall be made to: Missouri Attorney General's Office, Agriculture & Environment Division, P.O. Box 899, Jefferson City, MO 65102 and Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102.

VII. Civil Penalty

17. Civil Penalty: Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty of \$30,000.00. Defendants hereby authorize entry of this judgment against them and in favor of the Plaintiff for this sum.

18. Suspended Penalty: The parties agree to suspend collection of \$10,000 of the total civil penalty provided that Defendants comply with the terms of this Consent Judgment and the Missouri Clean Water Law for a period of two years following entry of this Consent Judgment in circuit court.

19. Payment Schedule: and Defendants agree to pay the up-front penalty of \$20,000 in the following installments:

- A. \$5,000 to be paid at the time of execution;
- B. \$5,000 to be paid within 30 days of execution;
- C. \$5,000 to be paid within 6 months of execution; and
- D. \$5,000 to be paid within 1 year of execution.

Defendants shall remit payment on or before each due date by check made payable to the "*State of Missouri*." Defendants will mail their check for civil penalties to "Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899." The Attorney General's office may hold or deposit the check consistent with its internal policies until such time as the Consent Judgment is entered by the Court. Failure to make any

payment when due will result in the total payment becoming due within fifteen days demand from the Attorney General.

VIII. Stipulated Penalties

20. 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. \$250.00 per day for each day of each violation up to thirty days.
- B. \$500.00 per day for each day of each violation, from thirty-one days to sixty days.
- C. \$1,000.00 per day for each day of each violation, beyond sixty days.

21. 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*" and mailed, along with a copy of the State's stipulated penalty demand letter, to: Collections Spécialist, 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.

22. 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

23. 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.

24. **Procedure for Requesting Modification.** Defendants shall use their best efforts to meet all of the requirements, schedules of compliance, and deadlines set out in Section VI of this Consent Judgment. If Defendants are unable to timely do so due for any reason not covered by the force majeure provision in Section VII, including, but not limited to financial reasons, then Defendants may request a modification of, and/or additional time to complete, any affected obligations.

25. Any request to revise this Consent Judgment shall:

- A. Include a detailed description of any financial or other constraint;
- B. Specify which obligations cannot be met, including the specific reasons why such obligations cannot be met;

- C. Propose a modification and/or a revised timeline for completing the obligation that is as expeditious as possible; and
- D. Explain in detail any justification for the proposed modification.

26. Defendants shall provide such additional information requested by the Department as is reasonably necessary to assist in evaluating the modification request.

27. The Department shall not unreasonably withhold approval of a reasonable request. Any revision to this Consent Judgment shall be incorporated herein by reference.

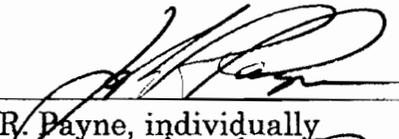
28. Defendants shall comply with any extended deadlines and, to the extent necessary, respond to any comments from the Department, to the Department's satisfaction, within fifteen days of the Department's comment letter.

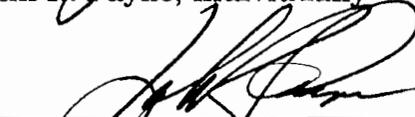
29. Any deadline in the Consent Judgment for which Defendants submit a request for extension of time and which expires before the Department issues a final decision shall be tolled until (7) days after the Department's final decision is issued ("tolling period"). Defendants shall not be deemed to be in violation of the Consent Judgment for failing to meet a deadline during a tolling period.

X. Costs

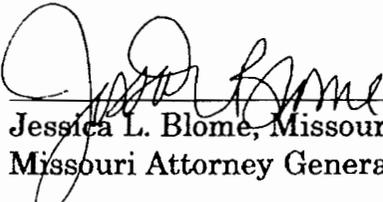
30. Defendants shall pay all court costs in this action, except that the parties will pay their own attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto executed this Consent Judgment:

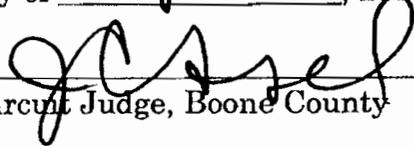
 _____ Date 8/13/13
John R. Payne, individually

 _____ Date 8/13/13
Payne Enterprises, Inc.

 _____ Date August 23, 2013
for Leanne Tippet Mosby, Director, Division of Environmental Quality
Missouri Department of Natural Resources

 _____ Date 8/14/13
Jessica L. Blome, Missouri Bar No. 59710
Missouri Attorney General's Office

IT IS SO ORDERED THIS 1th day of September, 2013.

 _____
Circuit Judge, Boone County