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BEFORE THE WATER PROTECTION PROGRAM
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI

IN THE MATTER OF:

River Downs West
Wastewater Treatment Facility

SERVE:

Richard Eddy, President
River Downs West
Homeowners Association, Inc.

and

Lou Lapaglia, Presiding Commissioner
Christian County Commission

No. 2013-WPCB-1228

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) number 2013-WPCB-1228, by the Missouri Department of Natural Resources, is a formal administrative action by the State of Missouri and is being issued because the River Downs West wastewater treatment facility (WWTF) 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 River Downs West 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 River Downs West Homeowners Association, Inc. (HOA) owns and operates the River Downs West wastewater collection and treatment facility located in the SW ¼, NW ¼, Sec. 34, T28N, R22W, Christian County, Missouri. The facility, which receives wastewater generated from approximately 67 connections, consists of extended aeration with tertiary filtration and chlorine disinfection. The facility has a design population equivalent of 255, a designed average flow of 19,000 gallons per day, and an actual flow of 16,337 gallons per day. Effluent discharges to a losing tributary to the James River pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) number MO-0114464.
- B. James River and its tributaries are waters of the state as the term is 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. The MSOP was issued to the HOA on December 1, 2005, and expired by its own terms on November 30, 2010. The MSOP requires the HOA to sample the effluent discharged from outfall No. 001 and chemically analyze the effluent sample for the water contaminants listed in part “A” every month.
- E. The MSOP also requires the effluent to comply with the limitations contained in part “A” and requires the results of the analysis to be submitted to the Department on monthly Discharge Monitoring Reports (DMRs) by the 28th day of the month following the reporting period.
- F. The MSOP includes interim and final effluent limitations for Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Fecal Coliform (Fecal), and Total Residual Chlorine (TRC), and a schedule of compliance (SOC) for the HOA to upgrade the WWTF to meet final effluent limitations set out in part “A” of the permit.
- G. In December 2008, the WWTF was extensively damaged by lightning and vandalism. The resulting power outage caused the WWTF to freeze, damaging pipes, the concrete tanks and mechanical equipment.
- H. On November 12, 2009, the Department conducted a compliance inspection of the WWTF and observed that the WWTF had only one functional blower motor; the tertiary filter beds were full of wastewater to the point of threatening to overtop the walls; and the dechlorinator was not supplied with tablets. Sludge was observed in the chlorine contact basin and below the outfall. As a result of the violations found during the inspection, the Department issued Notice of Violation number 13097SW to the HOA on December 10, 2009.

- I. Monthly DMRs submitted to the Department document that the effluent discharged from the HOA's facility failed to comply with the applicable permitted effluent limitations for Fecal during the months of September and December 2012.
- J. Monthly DMRs submitted to the Department document that the effluent discharged from the HOA's facility failed to comply with the applicable permitted effluent limitations for BOD during the months of March 2011; and September and December 2012.
- K. Monthly DMRs submitted to the Department document that the effluent discharged from the HOA's facility failed to comply with the applicable permitted effluent limitations for TSS during the months of March 2011; and December 2012.
- L. Monthly DMRs submitted to the Department document that the effluent discharged from the HOA's facility failed to comply with the applicable permitted effluent limitations for TRC during the month of June 2011.
- M. On April 25 and May 31, 2011, the Department issued Notices of Violation numbers 13547SW and 13609SW to the HOA for exceeding the permitted effluent limits for BOD and TSS during the 4th quarter of 2010 and the 1st quarter of 2011. On August 25, 2011, the Department issued Notice of Violation number 13776SW to the HOA for exceeding the permitted effluent limit for Total Residual Chlorine during the 2nd quarter of 2011.
- N. On May 2, 2011, the HOA submitted a petition to the Christian County Commission to fund a Neighborhood Improvement District (NID) to construct a new WWTF for the HOA and on May 16, 2011, the Commission approved the NID.
- O. On October 19, 2011, the Department received an application for Construction Permit from the HOA to construct a new WWTF at the subdivision. The Department determined that the application was incomplete and on November 10, 2011, the Department sent a letter to the HOA requesting additional information.
- P. In November 2011, the HOA obtained a mobile WWTF from the engineering firm that designed the new WWTF. The HOA added the mobile unit into the treatment process to use temporarily for treating wastewater until the dysfunctional WWTF can be replaced.
- Q. On June 1, 2012, the Department issued Construction Permit (CP) number CP0001213 to the HOA for construction of a new wastewater treatment facility. On October 24, 2012, the HOA sent a letter to the Department requesting an extension of the CP that was due to expire on November 30, 2012. On February 8, 2013, the Department granted an extension of the CP until November 30, 2013.

III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the Missouri Clean Water Law and its implementing regulations alleged and found to have been committed by the HOA are as follows:

1. Since at least January 2008, HOA has caused pollution of an unnamed tributary to the James River, waters of the state, or 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. Since February 1, 2006, the HOA has failed to upgrade the WWTF as required in part "B", Standard Conditions, and part "D", Schedule of Compliance, of the MSOP, in violation of Section 644.076.1, RSMo, and 10 CSR-6.010(7)(A);
3. Since December 2007, failed to comply with the effluent limits contained in part "A" of MSOP number MO-0114464, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.; and
4. Failed to submit complete, accurate and timely DMRs as required in part "A" of MSOP number MO-0114464 in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1.

IV. CORRECTIVE ACTIONS

- A. The Department and the HOA desire to amicably resolve all claims that might be brought against the HOA for the violations alleged above in Section III, Citations and Conclusions of Law, without the HOA admitting 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 HOA and/or Commission under this AOC.
- C. The HOA, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of twenty thousand dollars and no cents (\$20,000.00). The Department and the HOA further agree that the entire twenty thousand dollars (\$20,000.00) shall be suspended on the condition that the HOA does not violate the MCWL, its implementing regulation thereunder, and the agreed schedules in section IV, paragraph E of this AOC. The signed copies of the AOC shall be delivered to:

Ms. Mary Ann Sutter
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

- D. In the period of time from the effective date of this AOC until the new WWTF is completed, the HOA shall operate the existing WWTF at all times and comply with the conditions and requirements of the MSOP.

- E. The HOA and the Commission agree to construct a new WWTF according to the following schedule:
1. Within thirty (30) days of the effective date of this AOC, the HOA shall submit to the Department for review and approval, a closure plan developed in accordance with Part III, Section I of MSOP Standard Conditions for closure of the existing WWTF.
 2. Within fifteen (15) days receipt of Department comments on the closure plan, the HOA shall respond to and adequately address, to the Department's satisfaction, all Department comments on the closure plan.
 3. Within one hundred twenty (120) days of the effective date of the AOC, the Commission shall secure all necessary easements for operation and maintenance of the WWTF and solicit bids for construction of the WWTF.
 4. On or before July 1, 2013, the Commission shall begin construction of the WWTF.
 5. On or before, November 30, 2013, the Commission shall complete construction of the new WWTF as approved by the Department.
 6. Within sixty (60) days of completing construction, the Commission shall submit to the Department a Statement of Work Complete 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 and shall achieve compliance with the final effluent limitations contained in part "A" of the MSOP.
 7. Within ninety (90) days of completing construction of the new WWTF, the HOA shall complete closure of the existing WWTF according to the closure plan approved by the Department.
- F. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the HOA and/or the Commission 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 HOA and/or the Commission 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 HOA's and Commission's right to request an extension and may be grounds for the Department to deny the HOA and/or the Commission an extension.
- G. Should the HOA fail to comply with the terms of this AOC, including the deadlines for completion of construction and any required closure as set forth in section IV, paragraph E of this AOC, the HOA 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 "Christian County Treasurer, as custodian of the Christian County School Fund". Any such stipulated penalty shall be paid within ten (10) days of demand by the Missouri Department of Natural Resources and shall be delivered to:

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

- H. Nothing in this AOC forgives the HOA or the Commission 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.
- I. 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.
- J. Upon full compliance with all provisions of this AOC, the Department agrees to refrain from initiating or asserting against the HOA any civil or administrative suit claiming violations of the MCWL, Chapter 644, RSMo, listed in Notice of Violation Nos. 13097SW and 13776SW.
- K. 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 HOA for its records.
- L. The HOA shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. FINDING OF AFFORDABILITY

Pursuant to Section 644.145, the Affordability Finding, which addresses the obligations included within this Order through November 30, 2013, based upon the Commission's cost estimate of \$1,200,000.00 to finance and construct a new wastewater treatment facility as described in this AOC, is attached hereto at Exhibit 1. This Affordability Finding does not address future improvements that may be necessary to comply with the

MCWL or its implementing regulations. This AOC requires the Commission to complete the construction of a wastewater treatment facility in accordance with Construction Permit No. CP0001213.

VI. RIGHT OF APPEAL

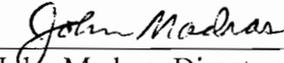
By signing this AOC No. 2013-WPCB-1228, the HOA and the Commission consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC, pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, 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.

VII. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

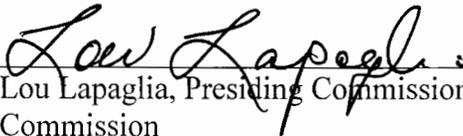
Ms. Mary Ann Sutter
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 13th day of April, 2013



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

Agreed to and Ordered this 11 day of APRIL, 2013



Lou Lapaglia, Presiding Commissioner
Commission

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. Buddy Bennett, Commissioner
Missouri Clean Water Commission
7361 Summer Azure Lane
Higginsville, MO 64037

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
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Mr. Dennis Wood, Commissioner
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