

IN THE CIRCUIT COURT OF STONE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI ex rel.)
Attorney General Chris Koster,)
and the Missouri Department of)
Natural Resources,)
)
Plaintiff,)
)
v.)
)
BLACK OAK MOUNTAIN)
SEWER COMPANY,)
)
Defendant.)

Case No. 12SN-CC00380

CONSENT JUDGMENT

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources and Defendant Black Oak Mountain Sewer Company, by and through counsel, 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 Defendant violated the Missouri Clean Water Law. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve allegations raised by Plaintiff's Petition, and that the parties want to terminate those identified issues of 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.

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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. "Defendant" means Black Oak Mountain Sewer Company.

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

d. "Facility" means the wastewater collection system and treatment facility serving the Black Oak Mountain Resort, located at NW ¼, SE ¼, Section 31, T22N, R23W, Stone County, Missouri.

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

f. "Resort" refers to the Black Oak Mountain Resort located in Stone County, Missouri.

g. "Tank" refers to the concrete wastewater holding tank, which has been connected Resort's wastewater collection system, and is buried within the boundaries of the Resort.

h. "WWTF" means "wastewater treatment facility."

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III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to Chapter 644 RSMo. Venue is proper in this court pursuant to Chapter 644 RSMo because the Defendant's conduct giving rise to this action took place in Stone County.

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. Defendant 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, Defendant is relieved of liability for the violations alleged in the Plaintiff's Petition, a list of which is attached hereto as Appendix A.

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. See Appendix A.

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

VI. Agreed Injunctive Relief

8. Defendant agrees and is ordered to comply with the Missouri Clean Water Law Chapter 644 and all implementing regulations for any and all future activities in the State of Missouri.

9. In compromise and satisfaction of the claims alleged in the Petition, and without admitting liability or fault to the same, Defendant agrees and is ordered to implement the following schedule to bring the WWTF serving the Resort into compliance with the Missouri Clean Water Law:

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- a. Defendant agrees and is ordered to ensure adequate maintenance of the WWTF and make the following repairs as specified in the timelines below:
- b. Within thirty (30) days of the entry of this Consent Judgment:
 - i. Clearly mark the outfalls for the WWTF, as required by the Permit and § 644.076.1 RSMo; and
 - ii. Maintain all ultraviolet disinfection units in operational condition to ensure effluent limitations for the facility are met, as required by 10 CSR 20-9.020(10)(D);
- c. Within sixty (60) days of the entry of this Consent Judgment:
 - i. Install required flow measurement and recording device(s) to continually total and record the flow of water being discharged from the facility, as required by 10 CSR 20-8.140(8)(G);
 - ii. Repair or purchase two (2) functional blower motors in order to ensure the efficient operation of the WWTF, as required by 10 CSR 20-8/180 (4) (C) 3.B.(V); and
 - iii. Provide adequate provisions to protect the operator and any visitors from unnecessary hazards, as required by 10 CSR 20-8.020(11)(C)11.
- d. Upon completion of any repairs or maintenance activities required under this Consent Judgment, Defendant shall submit documentation of same to the Department.
- f. Within ten (10) days of entry of this judgment, Defendant agrees and is ordered to submit the following documentation to the Department:
 - i. An engineer's Statement of Work Completed, including any

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documentation required by paragraph 9.d. above.

g. Within thirty (30) days of entry of this judgment , Defendant agrees to achieve compliance with all applicable MSOP effluent limitations contained in MSOP No. MO-0128333.

VII. Civil Penalty

11. Defendant consents to the entry of judgment in favor of the State of Missouri for a civil penalty of \$20,000.00. Defendant hereby authorizes entry of this judgment against them and in favor of the State of Missouri for this sum.

12. The parties further agree that \$8,000.00 of this civil penalty shall be suspended as described in paragraph 14.

13. Defendant agrees to pay the \$12,000.00 up-front civil penalty by check made payable to the “State of Missouri (Stone County)” in two payments. The first payment of \$6000.00 shall be paid within thirty (30) days of the entry of this Consent Judgment. The second payment of \$6000.00 shall be paid within one hundred eighty (180) days of the entry of this Consent Judgment. Payments shall be made by mailing same to: Collections Specialist, Missouri Attorney General’s Office, P.O. Box 899, Jefferson City, MO 65102-0899.

14. Suspended Civil Penalty. \$8,000.00 of the total penalty of \$20,000.00 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 13. 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

15. In the event that Defendant fails to comply with the requirements set forth in this Consent Judgment, Defendant 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. \$200.00 per day for each day of each violation, from thirty-one days to sixty days.
- C. \$300.00 per day for each day of each violation, beyond sixty days.

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

17. 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. Notices and Submittals

18. Whenever under the terms of this Consent Judgment that notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall

be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing of another individual designated to receive such communications. Notice to the individuals listed below or such other individuals designated pursuant to the foregoing, in writing and hand-delivered or sent by registered or certified mail, postage prepaid, shall constitute complete satisfaction of any notice requirement of the Consent Judgment.

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To the Missouri Department of Natural Resources:

Ms. Joan Doerhoff
Environmental Specialist IV
Missouri Department of Natural Resources
Water Pollution Program
P.O. Box 176
Jefferson City, MO 65102
(573) 751-0763
joan.doerhoff@dnr.mo.gov

To the Attorney General's Office:

Jacob Westen
Assistant Attorney General
Agriculture and Environment Division
State of Missouri Office of Attorney General
P.O. Box 899
Jefferson City, Missouri 65102
Voice: 573-751-8370
Fax: 573-751-8796
jacob.westen@ago.mo.gov

To the Black Oak Mountain Sewer Company

John View
351 Timbercreek
Nixa, Missouri 65714
417-839-1353
Jview3@sbcglobal.net

XI. Modification

19. 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.

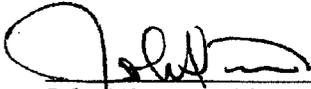
XII. Costs

20. Defendant shall pay all court costs in this action.

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

BLACK OAK MOUNTAIN SEWER COMPANY

By: 
John View, President

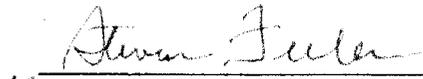
Date: September 3, 2014

MISSOURI ATTORNEY GENERAL'S OFFICE

By: 
Jacob Westen
Assistant Attorney General

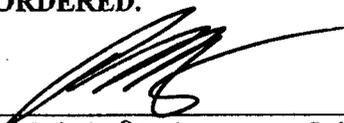
Date: 10-3-14

MISSOURI DEPARTMENT OF NATURAL RESOURCES

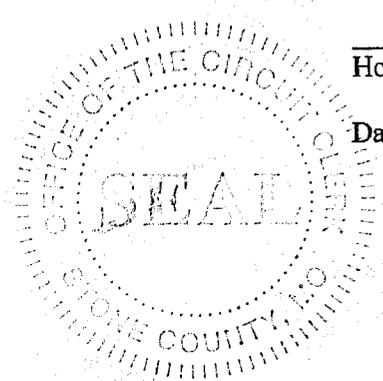
By: 
Leanne Tippet Mosby, Director
Division of Environmental Quality

Date: 10/27/14

SO ORDERED.


Hon. Mark A. Stephens, Judge

Date: 10-30-14



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APPENDIX A TO CONSENT JUDGMENT

The following list is a list of the violations alleged in Plaintiff's Petition, filed December 12, 2012, for which liability will be released upon Defendant's completion of all obligations under the attached Consent Judgment. See, Consent Judgment, paragraph 5.

1. Count I – Violation of § 644.051.1(1) RSMo, by Causing Pollution to Waters of the State, on July 21, 2011, August 7, 2012, August 18, 2012, September 5, 2012, and October 22, 2012.

2. Count II – Violation of Missouri Regulation 10 CSR 20-6.010(8)(A)4, by Failing to Report a sanitary sewer bypass within 24 hours after discharge, on August 18, 2012, September 5, 2012, and October 22, 2012.

3. Count III – Violation of § 644.051.1(3) and Missouri State Operating Permit ("MSOP") No. 0128333, by Failing to Comply with Effluent Limits, starting February 13, 2010 and continuing to COMPLETION OF PHASE III .

4. Count IV – Violation of § 644.076 RSMo, 10 CSR 20-6.010(8)(A)4, by Failing to Operate and Maintain the wastewater treatment facilities, on July 21, 2011 and August 7, 2012, by:

a. Failing to clearly mark the outfalls for the WWTF, as required by the Permit and § 644.076.1 RSMo;

b. Failing to have two functional blower motors to ensure the sufficient operation of the WWTF, as required by 10 CSR 20-8.180(4)(C)3.B.(V);

c. Failing to maintain in operational condition all ultraviolet disinfection units to ensure effluent limitations for the facility are met, as required by 10 CSR 20-9.020(10)(D);

d. Failing to install required flow measurement and recording device(s) to continually total and record the flow of water being discharged from the facility, as required by 10 CSR 20-8.140(8)(G); and

e. Failing to provide adequate provisions to protect the operator and any visitors from unnecessary hazards, as required by 10 CSR 20-8.020(11)(C)11.

5. Count V – Breach of January 8, 2011 Settlement Agreement (“Agreement”), by failing to meet deadlines set forth paragraph 4, subparagraphs D through H, starting since February 2011. A copy of the January 8, 2011 Agreement is attached to the filed Petition as Exhibit 1.