

RSMo.

- C. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- D. On November 17, 1998, the Missouri Department of Natural Resources issued a construction permit to Mr. Zitting to construct a three-cell lagoon to serve the park. On November 8, 1999, the Department received a request from Mr. Zitting to extend the construction permit for one year. On November 16, 1999, the Department sent a letter to Mr. Zitting granting a one year extension of the construction permit. To date, the Department has not received either a Statement of Work Completed or an application for a Missouri State Operating Permit (MSOP).
- E. On July 14, 2011, Department staff conducted a compliance inspection of the park's lagoon and observed that the main cell of the unpermitted lagoon contained what appeared to be wastewater.
- F. On August 4, 2011, the Department issued a Letter of Warning to Mr. Zitting for violations of the MCWL observed during the July 14, 2011, inspection of the park's lagoon. Enclosed with the letter was a copy of the Inspection Report from the July 14, 2011, inspection, which required Mr. Zitting to immediately submit an engineering report, and an application for a permit with the appropriate application fee. To date, the engineering report and permit application have not been received.
- G. On September 22, 2011, staff from the Department's Geology and Land Survey Division performed a geohydrologic evaluation of the park's lagoon site. Staff described the site as having moderate overall geologic limitations and slight collapse potential. The surface materials consist of approximately five to ten feet of highly permeable, silty-clay gravel residuum. The evaluator described the facility as an earthen holding basin with four cells that appeared to be unlined and constructed of surface materials from the site. Staff stated that the cells appeared to have issues holding water and discharge into Piper Creek.
- H. On March 7, 2012, Department staff investigated a February 27, 2012, environmental concern regarding a sewage leak at the park. Staff did not observe a sewage leak, but noted that sewage appeared to be flowing into two cells of the unpermitted lagoon. In the area described by complainants, staff observed a collection pipe that was not water tight and may allow a sewage bypass. Staff observed that the first cell of the lagoon was full of wastewater although the second cell had adequate freeboard.
- I. On March 28, 2012, the Department issued a Notice of Violation (NOV) to Mr. Zitting for operation of a wastewater lagoon without a permit and allowing water contaminants to be placed in a location where they are reasonably certain to cause pollution of waters of the state. The Department included a copy of the Inspection Report from the March 7, 2012, investigation, which stated that

although a construction permit had been issued to Mr. Zitting for construction of a wastewater lagoon, a Statement of Work Completed, nor an application for a permit had ever been received by the Department.

- J. On August 8, 2012, Mr. Zitting spoke with Department staff by phone stating that he had a buyer for the property and all of the mobile homes would be removed from the property within one hundred twenty (120) days.
- K. On or about August 15, 2012, Mr. Tony Hitchcock, a partner in C&H developers, contacted the Department and stated that C&H Developers had agreed to purchase the property once Mr. Zitting had removed all of the mobile homes and closure of the park was complete. At that time Mr. Hitchcock stated that C&H Developers would be closing the lagoon(s) and he inquired about developing a plan for lagoon closure. Staff advised Mr. Hitchcock on basic lagoon closure requirements and provided follow up information transmitted via facsimile.
- L. On January 17, 2014, Department staff spoke with Mr. Hitchcock by phone, and he stated that all mobile homes had been removed by Mr. Zitting and C&H developers had completed purchase of the property. Mr. Hitchcock stated that the lagoon had dried and in March or April 2014 he would be closing the lagoons and seeding the area. Staff requested that Mr. Hitchcock submit a closure plan for Department review and approval and Mr. Hitchcock agreed to submit a closure plan to the Department.
- M. Section 644.076.1 RSMo. makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

I. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed by Mr. Joseph Zitting are as follows:

- 1. Between September 8, 2008, and approximately December 8, 2012, operated, used or maintained a water contaminant source, (wastewater treatment lagoon) which discharged to an unnamed tributary to Piper Creek, waters of the state, without a MSOP, Sections 644.051.1(2) and 644.076.1, RSMo and 10 CSR 20-6.010 (1) (A) and (5) (A); and,
- 2. Between September 8, 2008, and approximately December 8, 2012, caused pollution of an unnamed losing tributary to Piper Creek, 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, Sections 644.051.1(1) and 644.076.1 RSMo.

II. AGREEMENT

- A. The Department and C&H Developers desire to amicably resolve all claims that may be brought against C&H Developers for violations alleged above in Section III, Citations and Conclusions of Law, without C&H Developers 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 C&H Developers under this AOC.
- C. C&H Developers agrees that all future development of the property will proceed according to applicable state or county regulations for wastewater treatment.
- D. Within thirty (30) days of the effective date of this AOC, C&H Developers shall submit, to the Department for review and approval a closure plan developed in accordance with Department Guidelines, described in Standard Conditions for National Pollutant Discharge Elimination System (NPDES) Permits, Part III, Section I, under Closure Requirements;
- E. Within ninety (90) days of Department approval of the closure plan, C&H Developers shall complete closure of the lagoons according to the Department approved closure plan;
- F. Within thirty (30) days of completing closure, C&H Developers shall submit to the Department a written statement that the lagoons have been closed and photographs of the site.
- G. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, C&H Developers 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, C&H Developers 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 C&H Developers' right to request an extension and may be grounds for the Department to deny C&H Developers an extension.
- H. C&H Developers shall fully implement all of the requirements of this AOC. Should C&H Developers fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs D-F, C&H Developers 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	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a certified or cashiers check made payable to “the Cape Girardeau County Treasurer, as custodian of the Cape Girardeau County School Fund.” Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

Missouri Department of Natural Resources
Accounting Program
P.O. Box 477
Jefferson City, MO 65102-0477

- I. Nothing in this AOC forgives C&H Developers from future non-compliance with the laws of the state of Missouri, nor requires the Department or the 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 with respect to the matters addressed herein, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous related memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- J. 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.
- K. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to C&H Developers for their records.
- L. C&H Developers shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

III. RIGHT TO APPEAL

By signing this AOC, C&H Developers 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.

IV. CORRESPONDENCE AND DOCUMENTATION

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

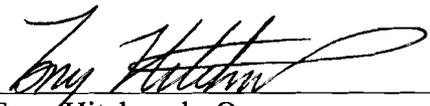
Ms. Kristi Savage-Clarke
Missouri Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 12 day of May, 2014.



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

Agreed to and Ordered this 12 day of May, 2014.



Tony Hitchcock, Owner
C&H Developers

Copies of the foregoing served by certified mail to:

Mr. Tony Hitchcock
C&H Developers
1527 East 470th Road
Bolivar, MO 65613

CERTIFIED MAIL

- c: Ms. Diane Huffman, Environmental Protection Agency
- Mr. Chris Wieberg, Chief, Operating Permits Section
- Ms. Cynthia Davies, Director, Southwest Regional Office
- Missouri Clean Water Commission