

IN THE CIRCUIT COURT OF OSAGE COUNTY, MISSOURI

STATE OF MISSOURI )  
ex rel. Chris Koster, )  
Attorney General, the )  
Missouri Department of )  
Natural Resources, and the )  
Missouri Clean Water )  
Commission, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MICHAEL J. KUSTER, )  
 )  
Defendant. )

FILED  
MAR 05 2014  
CHARLENE EISTERHOLD  
CIRCUIT CLERK

Case No. 11OS-CC00022

**FINAL JUDGMENT**

This Court heard evidence in this matter on July 3, 2013, including stipulations. Plaintiff has dismissed Mark A. Kuster from this lawsuit. The Court now enters this judgment against Michael J. Kuster under the Missouri Clean Water Law (chapter 644 RSMo).<sup>1</sup>

**Findings of Fact**

1. Since before 1995 and continuing to present, Defendant Michael J. Kuster and his brother, Mark A. Kuster have owned a three-cell lagoon that provides wastewater treatment service for Green Acres Subdivision near

<sup>1</sup> References to individual section of this law will be to the RSMo Supp. 2013, unless otherwise indicated.

Linn, Missouri. The lagoon is generally located in the NW 1/4, SE 1/4, Section 21, Township 43 North, Range 8 West, in Osage County, Missouri.

2. The lagoon is a “point source” as defined by § 644.016(16) RSMo because it discharges pollutants to waters of the state through a discreet conduit. Effluent from the lagoon discharges to an unnamed tributary to Owens Creek, which are “waters of the state” as defined in § 644.016(23) RSMo. The Department of Natural Resources has determined that Owens Creek is a “losing stream.” The lagoon requires an operating permit from the Department.

3. The State brought a civil action against the Mark and Michael Kuster in 2006 (Case No. 06OS-CC00013), which was resolved by a Consent Judgment on May 23, 2007. According to that document, the parties entered into a settlement agreement, effective October 1, 1998, in which the Kusters agreed to renew a then expired permit. On May 21, 1999 the Department reissued the permit jointly to Mark and Michael Kuster as individuals. The permit included a schedule for them to either upgrade the sewer system or connect to the City of Linn’s system by May 1, 2001. The Kusters failed to comply with that schedule and they failed to renew the permit, which expired on May 20, 2002.

4. Under the Consent Judgment in Case No. 06OS-CC00013, Mark and Michael Kuster were required to renew the permit. They complied by applying for and obtaining Missouri State Operating Permit # MO-0101541.

5. The permit expired on March 8, 2010. Mark and Michael Kuster did not submit a renewal application at least 180 days before the permit expired as required by §§ 644.051.10 and 644.076.1 RSMo, and 10 CSR 20-6.010(5)(C).

6. Since March 8, 2010, the lagoon has discharged effluent into the waters of the state without a current permit, in violation of § 644.051.2 RSMo.

7. The Kusters have not submitted quarterly discharge monitoring reports as required in Part A of the permit since October 2006, in continuous violation of § 644.076.1 RSMo and 10 CSR 20-7.015(9)(A)1. The Court has been presented no evidence that the effluent quality complies with the permit. However, an inspector for the Department collected a sample of the effluent on May 24, 2011. The Department's lab analyzed the sample and found that the effluent exceeded the permit's allowed weekly and monthly averages for biochemical oxygen demand and the allowed monthly average for total suspended solids. Count I of the State's petition alleges that on the

day of the inspection, the Kusters caused and permitted the discharge of untreated or partially treated wastewater from the lagoon into an unnamed tributary to Owens Creek, where it was reasonably certain to cause pollution, in violation of §§ 644.051.1(1) and 644.076.1 RSMo. The State's post-trial memorandum of law argues that the sample shows violation of § 644.050.1(3), which prohibits a discharge into the waters of the state contaminants that exceed effluent regulations or permit provisions established by the Clean Water Commission. At trial, Defendant Michael Kuster questioned whether a single sample can be considered representative of the effluent quality, but his own failure to submit discharge monitoring reports to show compliance with the weekly and monthly averages should not inure to his benefit. The State argues that the sample represents the average of the effluent quality for the entire week and month when the sample was collected, let alone the day of sampling, relying upon the definitions of "weekly average" and "monthly average" at 10 CSR 20-2.010 (40) and (84).

8. The expired permit included a schedule for connecting the Green Acres Subdivision to the city of Linn's wastewater treatment system within 90 days of notice of its availability or by September 1, 2008, whichever was first, and for closing the lagoon within the following six months. Connection

to the city's system was not made when required. A plan for closing the lagoon has not yet been submitted as the permit requires.

9. At trial, the parties presented evidence that the Department, having determined that the lagoon cannot meet effluent limitations for a losing stream, will not renew the permit again. Mark and Michael both stipulated that they are not willing to replace the lagoon with a new wastewater treatment facility. They agreed with the State that the best course at this point is to connect the subdivision to the City of Linn's wastewater treatment facility. Since the trial, counsel for the State has advised the Court that the city has allowed the connection. What remains to be done is that the lagoon must be permanently closed.

10. The State's Verified Petition alleged that Defendants failed to pay annual permit fees to the Department for the years 2009 and 2010, in violation of § 644.052 and 10 CSR 20-6.011(1)(A). Evidence at trial showed that Mark A. Kuster has paid these fees, as well as fees owed for 2011. Fees for 2012, in the amount of Five Hundred Fifty Dollars (\$550.00), which were due February 24, 2013, were not paid by the date of the trial. Permit fees and late-payment penalties (\$11.00 per month) accrue until the Department certifies that the lagoon is properly closed and officially terminates the

permit.

### **Conclusions of Law**

11. This Court has jurisdiction over the subject matter of this action and personal jurisdiction over Defendants.

12. Section 644.076.1 RSMo authorizes this Court to order injunctive relief and assess civil penalties of up to ten thousand dollars (\$10,000.00) per violation for each day that the violation occurred or continues to occur, as the Court deems proper.

### **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

13. Defendant Michael J. Kuster is permanently ordered and enjoined to obey, abide by and comply with this the Missouri Clean Water Law, Chapter 644 RSMo and the rules and regulations promulgated thereunder.

14. Defendant Michael Kuster is ordered to perform the following:
- a. submit to the Department for review and approval a closure plan for the lagoon that complies with Standard Conditions for National Pollutant Discharge Elimination System (NPDES) Permits, Part III, Section I, Closure Requirements within thirty (30) days

following written notice from Plaintiff to Defendant Michael Kuster that Mark Kuster has failed to provide the plan as required by the separate settlement agreement between Plaintiff and Mark Kuster.

b. within fifteen (15) days of receipt of Department comments on the lagoon closure plan submitted by Defendant Michael Kuster, he shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the closure plan. Plaintiff may waive this requirement in writing to Defendant, if the Department accepts an untimely lagoon closure plan from Mark Kuster and elects to review it.

c. complete closure of the lagoon according to the Department-approved closure plan, and apply for termination of Missouri State Operating Permit number MO-0101541 within one hundred twenty (120) days of Department's written notice to Defendant Michael Kuster that Mark Kuster has failed to complete these tasks as required by the separate settlement agreement between Plaintiff and Mark Kuster. This deadline may be extended by the Department, upon written request by Michael Kuster, for good cause.

15. For past violations of the Missouri Clean Water Law and

implementing regulations, the Court assesses against Defendant Michael Kuster a civil penalty in the amount of \$ 50,000.00. Of this amount, Defendant Michael Kuster is hereby ordered to pay \$ 15,000.00 in the form of a check, made payable to the “*State of Missouri (Osage County)*,” and delivered to Collections Specialist, P.O. Box 899, Jefferson City, MO 65102-0899. Execution for said sum to issue immediately. The balance of the assessed penalty, in the amount of \$ 35,000.00, is hereby suspended, contingent upon compliance with paragraph 14 by either Mark Kuster or Michael Kuster. The suspended portion of the civil penalty shall be forgiven if Plaintiff files with the Court a notice that the requirements of paragraph 14 have been satisfied by either Mark Kuster or Michael Kuster. If the requirements of paragraph 14 are not satisfied, Plaintiff may file a motion seeking imposition of all or part of the suspended portion of the civil penalty.

16. The injunction provisions of ¶¶ 13 and 14 this Judgment shall be binding upon Michael J. Kuster.

17. The Court hereby orders Michael J. Kuster to immediately remit to the Department the past-due permit fee for 2012 and all accrued late-payment penalties (total of \$660.00 as of billing on January 7, 2014; total of \$1221.00 as of billing on February 24, 2014, if paid before March 24, 2014), if

not already paid. Payment shall be made by check made payable to the "State of Missouri (Department of Natural Resources)" and delivered to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-089. Execution for said sum to issue immediately. The Court further orders Michael J. Kuster to continue to pay all permit fees and penalties for any late payment thereof until the Department terminates the permit for the WWTF upon determining that the WWTF has been properly closed.

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

**IT IS SO ORDERED.**

  
Circuit Judge

Entered this 5<sup>th</sup> day of March, 2014.

The Clerk shall issue a certified copy of this judgment to each of the parties or their counsel of record.