

SETTLEMENT AGREEMENT

Attorney General Chris Koster, the Missouri Department of Natural Resources, and Mark A. Kuster agree to this Settlement Agreement.

WHEREAS, Chris Koster is the duly elected, qualified, and acting Attorney General of Missouri. The Attorney General is authorized to institute all civil proceedings at law or in equity on behalf of the State as necessary to protect the rights and interests of the State under § 27.060 RSMo. Section 644.076 RSMo authorizes the Attorney General to commence a civil action for injunctive relief and civil penalties for violations of the Missouri Clean Water Law.

WHEREAS, the Missouri Department of Natural Resources (“Department”) is a state agency created under § 640.010 RSMo to administer the programs relating to environmental control in the State of Missouri.

WHEREAS, since before 1995 and continuing to present, Mark A. Kuster and his brother, Michael J. Kuster, have owned and operated a wastewater treatment facility (“WWTF”), which is a three-cell lagoon that serves Green Acres Subdivision in Linn, Missouri. The WWTF is generally located in the NW 1/4, SE 1/4, Section 21, Township 43 North, Range 8 West, Osage County, Missouri.

WHEREAS, Effluent from the WWTF discharges to an unnamed tributary to Owens Creek, which are both “waters of the state” as defined in § 644.016(23) RSMo.

WHEREAS, the WWTF is a “point source” as defined by § 644.016(16) RSMo because it discharges pollutants to waters of the state.

WHEREAS, Mark and Michael Kuster applied for and received Missouri State Operating Permit # MO-0101541 (the “Permit”) for the WWTF.

WHEREAS, the 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 WWTF within the following six months.

WHEREAS, Mark and Michael Kuster failed to connect to the city of Linn’s wastewater treatment system and failed to submit a final WWTF closure plan as required by the Permit.

WHEREAS, the Permit expired on March 8, 2010.

WHEREAS, Mark and Michael Kuster did not submit a timely renewal application before the permit expired on March 8, 2010, in violation of §§ 644.051.10 and 644.076.1 RSMo, and 10 CSR 20-6.010(5)(C).

WHEREAS, since October 2006, Mark and Michael Kuster have failed to submit quarterly discharge monitoring reports (“DMRs”) as required in

Part A of the Permit, in violation of § 644.076.1 RSMo and 10 CSR 20-7.015(9)(A)1.

WHEREAS, an inspector of the Department determined that on May 24, 2011, the WWTF discharged wastewater with BOD₅ and Total Suspended Solids in excess of limits authorized in the expired permit, in violation of § 644.051.1(3) RSMo.

WHEREAS, the State of Missouri filed an action in the Circuit Court of Osage County against Mark and Michael Kuster for violating the Missouri Clean Water Law and implementing regulations on the basis of the above-stated facts, and the case number is 11OS-CC00022.

WHEREAS, pursuant to § 644.076.1 RSMo, the court may impose upon the defendants an injunction and penalties up to ten thousand dollars (\$10,000.00) for each violation the court determines, for each day such violation occurs or continues to occur.

WHEREAS, Mark A. Kuster has completed construction of the sewer extension to connect the Green Acres Subdivision to the City of Linn's wastewater treatment system according to the City's requirements and all the wastewater currently being generated in Green Acres Subdivision now flows to the city of Linn's wastewater treatment facility.

WHEREAS, Mark A. Kuster has ceased all discharges from the Facility and pumped the wastewater from the Facility into the City of Linn's

wastewater collection system. Additionally, Mark A. Kuster has provided written verification to the Department that the city of Linn received the wastewater.

WHEREAS, the Department, the Attorney General and Mark A. Kuster desire to resolve all disputes and claims which the Department and Attorney General may assert against him personally for alleged violations of the Missouri Clean Water Law and regulations related to the WWTF.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Department, the Attorney General, and Mark A. Kuster agree as follows:

1. The objective of the parties to this Settlement Agreement is to protect human health and the environment.
2. The provisions paragraphs 4 and 5 of this Settlement Agreement shall be binding upon the parties to this Settlement Agreement, 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 Settlement Agreement or their agents, servants, employees, heirs, successors, and assigns.
3. The State shall dismiss Mark Kuster from case no. 11OS-CC00022 as soon as practicable after the effective date of this Settlement

Agreement. The Department and the Attorney General agree not to bring or cause to be brought any administrative or civil action against Mark A. Kuster for penalties arising out of the above-referenced violations in the event that he complies with the terms herein. In consideration for the release contained herein, Mark A. Kuster agrees to comply with all State of Missouri environmental statutes and their implementing regulations for any and all future activities in the State of Missouri. Nothing herein shall be construed as forgiving future non-compliance with all State of Missouri environmental statutes and their implementing regulations

4. Mark A. Kuster agrees to comply with all State of Missouri environmental statutes and all implementing regulations for any and all future activities in the State of Missouri.

5. Mark A. Kuster agrees to close the lagoon according to the Department's standards and the following schedule.

i. Within sixty (60) days of the execution of this Settlement Agreement by the Department, Mark A. Kuster shall submit to the Department for review and approval a closure plan for the WWTF that complies with Standard Conditions for National Pollutant Discharge Elimination System (NPDES) Permits, Part III, Section I, Closure Requirements.

ii. Within fifteen (15) days of receipt of Department comments on the Facility closure plan, Mark A. Kuster shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the closure plan.

iii. Within one hundred eighty (180) days of Department approval of the closure plan, Mark A. Kuster shall complete closure of the WWTF according to the Department-approved closure plan, and apply for termination of Missouri State Operating Permit number MO-0101541.

6. Mark A. Kuster consents to a civil penalty of Fifty Thousand Dollars (\$50,000.00). Forty Thousand Dollars (\$40,000) of the penalty shall be suspended and forgiven, if Mark A. Kuster fully complies with the terms of this Settlement Agreement, including payment of any stipulated penalties demanded by the Department pursuant to ¶ 10 below, and therefore has not caused the suspended penalty to be due.

7. Mark A. Kuster shall pay Ten Thousand Dollars (\$10,000.00) of the penalty in two payments of Five Thousand Dollars (\$5,000.00) each as follows: He shall make the first payment no later than sixty (60) days after this Settlement Agreement is executed by the Department and shall make the second payment no later than one hundred eighty (180) days after this Settlement Agreement is executed by the Department. Mark A. Kuster shall make each payment by delivering a check made payable to "*State of*

Missouri (Osage County)” to: Collections Specialist, Missouri Attorney General’s Office, P.O. Box 899, Jefferson City, MO 65102-0899.

8. This Settlement Agreement shall not affect the liability of Michael J. Kuster for a civil penalty and any additional relief as separately determined by the Circuit Court of Osage County in case no. 11OS-CC00022.

9. By entering this Settlement Agreement, Mark A. Kuster does not waive any claims or causes of action that he may assert against Michael J. Kuster.

10. In the event that Mark A. Kuster fails to comply with the requirements set forth in this Settlement Agreement, he shall be liable for stipulated penalties in accordance with the following schedule:

- A. **\$100.00** per day for each day following the missing of a deadline set forth in this Settlement Agreement up to thirty days.
- B. **\$200.00** per day for each day following the missing of a deadline set forth in this Settlement Agreement, from thirty-one days to sixty days.
- C. **\$500.00** per day for each day following the missing of a deadline set forth in this Settlement Agreement, beyond sixty days.

11. Stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Mark A. Kuster shall pay stipulated penalties by check made payable to the "*State of Missouri (Osage 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. The Attorney General shall deposit and process checks for stipulated penalties in accordance with Missouri law.

12. Mark A. Kuster shall remit to the Department permit fees and late-payment penalties in the amount of \$638.00, if paid before December 5, 2013. (An additional penalty of \$11.00 will be added to every subsequent invoice issued on the fourth working day of each month that payment remains delinquent.) 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 65102-0899.

13. Mark A. Kuster shall 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.

14. Whenever under the terms of this Settlement Agreement 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 Settlement Agreement.

To the Missouri Department of Natural Resources:

Mary Ann Sutter
Missouri Department of Natural Resources
Water Protection Program
PO Box 176
Jefferson City, MO 65102
(573) 522-4018
(573) 522-9920 FAX

To the Attorney General's Office:

Timothy Duggan
Assistant Attorney General
Agriculture and Environment Division
State of Missouri Office of Attorney General
P.O. Box 899
Jefferson City, Missouri 65102
Phone: 573-751-9802
Fax: 573-751-8796

15. Except as otherwise specified herein, this Settlement Agreement may be modified or amended only upon written agreement by and among the parties, or their authorized successors and assigns..

16. This Settlement Agreement shall be effective on the date it is signed on behalf of the Department of Natural Resources.

The parties hereby consent to this Settlement Agreement through their duly authorized representatives as indicated below.

SIGNATORIES

Mark A. Kuster
Mark A. Kuster

12-15-13
Date

MISSOURI ATTORNEY GENERAL'S OFFICE

By: Timothy P. Duggan
Timothy P. Duggan
Assistant Attorney General

Date: 2/3/14

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: Leanne Tippet Mosby
Leanne Tippet Mosby, Director
Division of Environmental Quality

Date: 2/3/2014