

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Baker Subdivision Wastewater)
 Treatment Facility)
)
)
 Proceeding under the)
 Missouri Clean Water Law)

Order No. 2015-WPCB-1323

**NOTICE AND ORDER TO ABATE VIOLATIONS
AND PAY ADMINISTRATIVE PENALTIES**

SERVE BY CERTIFIED MAIL #7013 3020 0001 2161 5020
RETURN RECEIPT REQUESTED

TO: Rhad and Leah Baker, Owners
4851 County Road 219
Fulton, MO 65251

You are hereby notified that on this date the Missouri Department of Natural Resources has issued this Notice and Order to Abate Violations and Pay Administrative Penalties to Rhad and Leah Baker (respondents) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri, specifically Sections 644.056 and 644.079 RSMo.

Failure to comply with this order is, by itself, a violation of the MCWL under Section 644.076 RSMo. Continued noncompliance may result in the department pursuing legal action for injunctive relief, additional penalties of up to ten thousand dollars (\$10,000.00) per day for each day or part thereof of noncompliance, a surcharge of 15% of the penalty described herein, 10% interest on any amounts owed, attorney fees and costs, and/or any other remedy authorized by law, including but not limited to, Sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

FINDINGS OF FACT

1. Baker Subdivision consists of seven duplexes and two single family residences located in Fulton, Missouri. Wastewater from the subdivision is treated by a mechanical plant that uses physical aeration which is located in the NW 1/4, NW 1/4, SW 1/4, Section 6, Township 46 North, Range 9 West, Callaway County, Missouri. The wastewater treatment facility (WWTF) has a design flow of 4,655 gallons per day with a design population equivalent of 49. Treated effluent discharges to a tributary to Snyder Creek pursuant to Missouri State Operating Permit (MSOP) Number MO-0118052.

2. Snyder Creek and its tributaries are waters of the state as defined by Section 644.016(27) RSMo.

3. The department issued MSOP Number MO-0118052 to the respondents on May 8, 2012, and it is set to expire on May 7, 2017. MSOP Number MO-0118052 requires discharges from the facility to comply with the limitations contained in Part A of the MSOP. Pursuant to Part I, Section A.1, Standard Conditions of MSOP Number MO-0118052, if there is a discharge at any time during the reporting period, the respondents are required take a representative sample and chemically analyze the effluent for water contaminants listed in Part A of the MSOP and submit the results to the department on a quarterly Discharge Monitoring Report (DMR) on or before the 28th day of the month following the reporting period.

4. The department has not received timely DMRs for the first, second, third and fourth quarters of 2014 as required by MSOP Number MO-0118052.

5. Quarterly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for Biochemical Oxygen Demand during the third quarter of 2013

6. Quarterly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for Total Suspended Solids during the first quarter of 2013.

7. On March 10, 2014, the department issued the respondents a Letter of Warning for failure to pay the annual operating fee.

8. On March 18, 2014, department staff conducted a routine compliance inspection of the WWTF. During the inspection, staff observed sludge deposits below the WWTF's outfall. Staff also observed that there was no all-weather access road to the WWTF and the WWTF's outfall was unmarked. Staff also discovered that no Class D operator was retained for the WWTF, as required by the MSOP. During a review of department records, staff noted that DMRs documented an exceedance of permit effluent limits for Total Suspended Solids during the first quarter of 2013, annual inflow and infiltration reports were not received by the department for 2012 and 2013, and permit fees for 2014 were not paid.

9. On April 24, 2014, the department issued Notice of Violation (NOV) Number NER2014040310293774 to the respondents for violations documented during the March 13, 2014 inspection. The inspection report that accompanied the NOV required the respondents to take corrective actions and resolve the violations by May 15, 2014. In the cover letter for the inspection report, the department offered the respondents an opportunity to meet with staff to discuss corrective actions necessary to resolve the violations documented in the NOV. The department did not receive a response to the NOV.

10. On October 15, 2014, department staff conducted a routine compliance inspection of the WWTF. During the inspection, staff observed sludge deposits below the WWTF's outfall. Staff also observed that there was no all-weather access road to the WWTF and the WWTF's

outfall was unmarked. Staff also discovered that no Class D operator was retained for the WWTF, as required by the MSOP. During a review of department records, staff noted that the department had not received DMRs for the first and second quarters of 2014 and had not received inflow and infiltration reports for 2012 and 2013. Furthermore, staff discovered that the respondents failed to develop an Operations and Maintenance Manual for the WWTF and pay annual permit fees for 2014.

11. On October 27, 2014, the department issued NOV Number NER2014101708293054 to the respondents for violations documented during the October 15, 2014 inspection. The inspection report that accompanied the NOV required the respondents to take corrective actions and resolve the violations by November 17, 2014. In the cover letter for the inspection report, the department offered the respondents an opportunity to meet with staff to discuss corrective actions necessary to resolve the violations documented in the NOV. The department did not receive a response to the NOV.

12. As of the date of this order, the department has not received the third and fourth quarter 2014 DMRs, and the 2012 and 2013 inflow and infiltration reports.

13. As of the date of this order, the department has not received payment for the 2014 and 2015 annual MSOP fees, which currently total \$281.00 in fees and late penalties.

14. The amount of the administrative penalty included herein was assessed according to the criteria of 10 CSR 20-3.010. From a gravity-based analysis, the violations posed at least a minor potential for harm based on the potential risk to human health, safety and the environment. The violations were also at least a moderate deviation from the standard required by the MCWL and its implementing regulations. Using the gravity-based matrix, and finding both the deviation from the standard and the potential for harm the base penalty falls within a range of \$1,501.00 to

\$2,500.00. Since the department documented four violations of the MCWL, and the respondents failed to correct the non-compliance after being informed of the requirements by the department on at least three separate occasions, an administrative penalty in the amount of \$8,000.00 is justified.

15. This order is necessary to compel compliance and to prevent, or eliminate, threats to human health and the environment.

STATEMENT OF VIOLATIONS

The respondents violated the MCWL and its implementing regulations as follows:

16. Placed or caused or permitted to be placed water contaminants in a locations 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.

17. Failed to operate and maintain WWTF to comply with the MCWL and applicable MSOP conditions, in violation of Section 644.051.1(3) and 644.076.1, RSMo.

18. Failed to retain a certified operator to supervise the operation and maintenance of the facility as required by MSOP No. MO-0118052, in violation of Section 644.076.1, RSMo, and 10 CSR 20-9.020(2)(B) and (D).

19. Failed to submit complete, accurate and timely DMRs as required in Part A of MSOP Number MO-0118052, in violation of Section 644.0761.1 RSMo and 10 CSR 20-7.015(9)(D).

CORRECTIVE ACTIONS

Pursuant to Section 644.056 RSMo, the department hereby orders the respondents to complete each of the following corrective actions:

20. The respondents are ordered to submit to the department complete, accurate and timely DMRs on or before the 28th day of the month following the monitoring period as required by Part I, Section A.1, Standard Conditions of MSOP Number MO-0118052.

21. Within 10 days of the date of this order, the respondents are ordered to conduct the following in-plant operational control monitoring requirements described in 10 CSR 20-9.010(5)(B) and maintain written records of this activity. The respondents are ordered to continue to conduct the in-plant operational monitoring until receiving written approval from the department to cease the operational monitoring.

- a. Each day, Monday through Friday, monitor and record weather conditions such as ambient temperature and precipitation, flow and influent pH pursuant to 10 CSR 20-9.010(5)(B)1.
- b. Each day, Monday through Friday, monitor the mixed liquor suspended solids for settleability and dissolved oxygen and record the results oxygen pursuant to 10 CSR 20-9.010(5)(B)2.
- c. Once per week, monitor the influent and mixed liquor suspended solids for non-filterable residue pursuant to 10 CSR 20-9.010(5)(B)2.
- d. Samples shall be collected, handled and analyzed pursuant to department-approved wastewater analysis methods described 10 CSR 20-7.015(9)(D)2.

22. Within 10 days of the date of this order, the respondents are ordered to visually inspect the WWTF and the receiving stream below the outfall for sludge deposits a minimum of four times per week to ensure that the WWTF is operating properly. Respondents are ordered to maintain a written log of the inspections and note if there were any issues with the WWTF, whether sludge was observed in the clarifier or below the outfall, and corrective action taken. If

there is sludge below the outfall, the respondents shall report the discharge to the department within 24 hours of discovery of sludge in the receiving stream. Respondents are ordered to report the discharge of the sludge to the department by phone at (660) 385-8000 between 8:00 a.m. and 5:00 p.m. Monday through Friday or at the department's 24-hour spill line at (573) 634-2436 after hours, weekends and holidays. The respondents are ordered to continue to conduct inspections and maintain the log until receiving written approval from the department to cease the inspections and maintaining the log.

23. The respondents are ordered to submit the written records and analytical results of the in-plant operational monitoring required in Paragraph 21 above and the log of inspections required in Paragraph 22 to the department each month by the 15th day of the following month as described in Paragraph 32 of this order.

24. Within 30 days of the date of this order, the respondents are ordered to retain the services of, at minimum, a certified "D" wastewater operator to properly operate and maintain the WWTF until such a time that the WWTF is either eliminated by connection to an area-wide wastewater treatment and collection system or the WWTF is closed by a department-approved closure plan. In the event the respondents change operators at any time in the future, the respondents shall notify the department in writing within 10 days of such occurrence. Within 15 days of retaining the operator, the respondents shall submit a copy of the signed contract to the department indicating that the operator is agreeing to operate and maintain the WWTF.

25. Within 30 days of the date of this order, the respondents are ordered to submit to the department the third and fourth quarter 2014 DMRs. If the respondents are not able to submit the missing DMRs, the respondents shall submit to the department for a written response

explaining why the respondents are not able to submit the DMRs and an explanation of actions taken to prevent a reoccurrence of the violation in the future.

26. Within 30 days of the date of this order, the respondents shall mark the outfall of the WWTF.

27. Within 90 days of the date of this order, the respondents are ordered to submit to the department for review and approval an Operations and Maintenance Plan that shall, at a minimum, address maintenance of the mechanical equipment, monitoring type and frequency, record keeping and operating procedures including the amount, frequency and method of sludge disposal. Monitoring shall include, at a minimum, dissolved oxygen, influent pH, influent and effluent Total Suspended Solids, and influent and effluent Biochemical Oxygen Demand.

28. Within 120 days of the date of this order, the respondents are ordered to construct an all-weather access road leading to the WWTF as required in 10 CSR 20-8.020(11)(A)2.

PENALTY

Pursuant to Section 644.079 RSMo and 10 CSR 20-3.010, the department hereby orders the respondents to pay administrative penalties for the above-referenced violations as follows:

29. Within 30 days from the date of issuance of this order, the respondents are ordered to pay to the department an administrative penalty in the amount of \$8,000.00. Such payment shall be made by check made payable to: *Callaway County Collector as Custodian of the Callaway County School Fund*.

30. Such payment must be delivered to the Department of Natural Resources, c/o Accounting Program, P.O. Box 477, Jefferson City, Missouri 65102-0477.

SUBMISSIONS

31. All other documentation submitted to the department for compliance with this order shall be submitted within the timeframes specified to:

Mr. Peter Burch
Missouri Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, Missouri 65102-0176

and

Ms. Irene Crawford
Northeast Regional Office
1709 Prospect Drive
Macon, Missouri 63552-2602.

OTHER PROVISIONS

32. Any request for an extension of time or to otherwise modify this order may be considered on a case-by-case basis, if the respondents makes a written request to the department within 10 business days of this order, and otherwise provides appropriate justification and/or documentation to the department in a timely manner. Any modification of this order shall be in writing.

33. Compliance with this order resolves only the specific violations described herein, and this order shall not be construed as a waiver or modification or any other requirements of the MCWL and regulations, or any other source of law; nor does this order resolve any future violations of this order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

34. This order shall apply to and be binding upon the respondents and any of its agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the respondents. Any changes in ownership or corporate status, including but not limited to, any transfer of assets or real or personal property shall not relieve the respondents of its obligation to comply with this order.

NOTICE OF APPEAL RIGHTS

35. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission
Truman State Office Building, Room 640
301 West High Street
P.O. Box 1557
Jefferson City, Missouri 65102
phone: (573) 751-2422
fax: (573) 751-5018
website: www.aa.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 22nd day of April 2015 by:

DEPARTMENT OF NATURAL RESOURCES

John Madras

John Madras, Director
Water Protection Program

c: Irene Crawford, Northeast Regional Office
Jack McManus, Missouri Attorney General's Office