

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Clear Creek Subdivision)
 Wastewater Treatment Facility) **Order No. 2015-WPCB-1338**
)
 Serve:)
 Tory Smith, President)
 Clear Creek Homeowners Association)

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1338, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Clear Creek Subdivision, LLC and Clear Creek Homeowners Association (Respondents) violated the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the MCWL Section 644.076.1, RSMo. Litigation may occur without further administrative notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Respondents of liability for, or preclude the department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

FINDINGS OF FACT

1. Clear Creek Subdivision, L.L.C. is an active Limited Liability Company registered with the Missouri Secretary of State.

2. Clear Creek Homeowners Association is a nonprofit corporation in good standing and registered with the Missouri Secretary of State. The 2014-2015 Biennial Registration Report filed with the Missouri Secretary of State on March 27, 2015, lists Mr. Tory Smith as the President and Mr. Howard Burton as the Secretary.

3. The Respondents own and operate a wastewater treatment facility (WWTF) which is located in the NW ¼, SE ¼, NW ¼, Section 14, Township 57 North, Range 5 West, of Marion County, Missouri. Wastewater generated by homes in the Clear Creek Subdivision is treated by a recirculating sand filter with ultraviolet disinfection. The subdivision is located at Highway W, Hannibal, Missouri and currently consists of 45 homes. The WWTF has a design flow of 14,900 gallons per day and an actual flow of 4,900 gallons per day with a design population equivalent of 150. Design sludge production is 18.9 dry tons per year and sludge is removed by a contract hauler. The WWTF currently operates pursuant to the terms and conditions of Missouri State Operating Permit (MSOP) No. MO-0132861.

4. MSOP No. MO-0132861 was first issued to the Respondents on April 20, 2007, and expired on April 19, 2012. The MSOP authorizes the Respondents to discharge treated effluent from Outfall No. 001 to a tributary to Clear Creek in accordance with the effluent limitations and monitoring requirements set forth in the MSOP.

5. MSOP No. MO-0132861 requires the Respondents to sample the effluent discharged from Outfall No. 001 and chemically analyze the effluent sample for the water

contaminants listed in Part “A” every month. MSOP No. MO-0132861 further requires the effluent to comply with the effluent limitations contained in Part “A” and requires the results of the analysis to be submitted to the department on monthly Discharge Monitoring Reports (DMRs) by the 28th day of the month following the reporting period.

6. MSOP No. MO-0132861 requires the respondents to submit an annual sludge report to the department by January 28th of each year for the previous calendar year period.

7. Clear Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.

8. Domestic wastewater is a water contaminant source as the term is defined by Section 644.016(24), RSMo.

9. Monthly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with the applicable permitted effluent limitations for Ammonia as Nitrogen during the months of August 2013; May, June, August, September, October, and November 2014; and January, February, March, April, May, and June 2015.

10. Monthly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with the applicable permitted effluent limitations for Fecal Coliform during the month of September 2013.

11. Monthly DMRs submitted to the department document that the WWTF failed to report the concentration of *Escheria Coliform* during the months of April, May, and June 2015.

12. On March 5, 2013, department staff conducted a routine compliance inspection of the WWTF. Staff documented that the perimeter fence was inadequate and could allow unauthorized access to the WWTF, the gate to the WWTF was not locked, and warning signs

were not posted on all sides of the perimeter fence. Staff observed that the WWTF was discharging during the inspection collected a sample of the effluent for analysis. Chemical analysis of the sample documented that the effluent exceeded the daily maximum effluent limit for Ammonia as Nitrogen provided in MSOP No. MO-0132861.

13. On April 4, 2013, the department issued the Respondents Notice of Violation (NOV) No. NER2013031214425292 for violations observed during the March 5, 2013, inspection.

14. On March 12 and 13, 2014, department staff conducted a routine compliance inspection of the WWTF. Staff documented that the perimeter fence was inadequate and could allow unauthorized access to the WWTF, the gate to the WWTF was not locked, and warning signs were not posted on all sides of the perimeter fence. Staff observed that the WWTF was discharging during the inspection and collected a sample of the effluent for analysis. Chemical analysis of the sample documented that the effluent exceeded the daily maximum effluent limit for Ammonia as Nitrogen provided in MSOP No. MO-0132861.

15. On April 2, 2014, the department issued the Respondents NOV No. NER2014032807442784 for violations observed during the March 12 and 13, 2014, inspection. In the NOV, the department offered the Respondents an opportunity to meet to discuss the actions required to bring the WWTF into compliance with the MCWL.

16. On May 19, 2014, the department received a completed application for an MSOP from the Respondents and annual sludge reports for calendar years 2006 through 2013.

17. On July 28, 2014, the department received an engineering report, prepared by Klingner & Associates recommending design alternatives for the WWTF. On September 18,

2014, the department sent correspondence to the Respondents with comments regarding the engineering report. The department requested a response to the comments within 30 days.

18. On December 24, 2014, the department sent correspondence informing the Respondents that DMRs submitted to the department documented the effluent discharged from the WWTF violated the permitted effluent limitations for Ammonia during the months of May, June, August, September, October, and November 2014.

19. On February 1, 2015, the department reissued MSOP No. MO-0132861 to the Respondents, which expires by its own terms on September 30, 2018.

20. On February 10, 2015, the department sent correspondence to the Respondents stating that a response had not been received to the department comments on the engineering report.

21. On February 23, 2015, the department received a response to the February 10, 2015, letter from Klingner & Associates stating that they were waiting for weather conditions to improve to conduct a soil analysis and requested a 60 day extension to submit comments.

22. On April 17, 2015, the department received a response to the department comments on the engineering report from Klinger & Associates, on behalf of the Clear Creek Subdivision.

23. On May 19, 2015, the department sent correspondence to the Respondents stating that the proposed project to add 6.37 acres of subsurface irrigation following the existing WWTF was approved.

24. As of the date of this Order, the department has not received a complete and accurate annual sludge report for 2014 and the WWTF continues to exceed permitted effluent limitations for Ammonia as Nitrogen.

25. Section 644.076.1, RSMo makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes penalties up to \$10,000.00 per day per violation.

STATEMENT OF VIOLATIONS

The Respondents have violated the MCWL and its implementing regulations as follows:

26. During the months of August of 2013; May, June, August, September, October, and November of 2014; and January, February, March, April, May, and June of 2015, the WWTF failed to comply with the effluent limits contained in Part "A" of MSOP No. MO-0132861, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

27. Caused pollution of the tributary to Clear Creek, waters of the state, or placed or caused or permitted to be placed water contaminants in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

28. The Respondents failed to submit a complete and accurate annual sludge report for 2014 as required by the Standard Conditions in MSOP No. MO-0132861, in violation of Section 644.076.1, RSMo.

AGREEMENT

29. The department and the Respondents desire to amicably resolve all claims that may be brought against the Respondents for violations alleged above in Statement of Violations.

30. 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 as the Respondents under this AOC.

31. The Respondents in compromise and satisfaction of the department's claims relating to the above referenced violations agree and are ordered, without admitting liability or fault, to pay a penalty in the amount of \$4,000.00. The department and the Respondents further agree that \$2,000.00 of the civil penalty shall be suspended as described in Paragraph 32 below. The payment of the civil penalty in the amount of \$2,000.00 shall be in the form of a check made payable to the "*Marion County Treasurer, as custodian of the Marion County School Fund*" and is due and payable upon execution of this AOC by the Respondents. The check and the signed copy of this AOC shall be delivered to:

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

32. The suspended penalty described in Paragraph 31, in the amount of \$2,000.00, shall be suspended for a period of two years from the execution of this AOC upon the condition that the Respondents do not violate the terms of the AOC. Upon determination that the Respondents have failed to meet the terms of this AOC, including the requirements of Paragraphs 33 through 36, the department shall send a written demand for the suspended penalty

to the Respondents. The Respondents shall have 15 days from receipt of the written demand to submit the suspended penalty to the address listed in Paragraph 31.

33. Within 15 days of the effective date of this Order, the Respondents agree and are ordered to submit a complete and accurate annual sludge report to the department for the previous calendar year and shall submit complete, timely, and accurate annual sludge reports by January 28th of each year for the previous calendar year. The annual sludge reports shall contain the number of gallons and percent solids removed from individual septic tanks and a description of any unusual operating conditions. The annual sludge reports shall list the final disposal method, dates, location, and person responsible for hauling and disposal for each septic tank serviced, according to Standard Conditions Part III of MSOP No. MO-0132861.

34. Within 120 days of the effective date of this Order, the Respondents agree and are ordered to submit to the department for review and approval, a complete application for a construction permit, revised facility plan, design summary, plans and specifications sealed by a professional engineer licensed to practice in the state of Missouri, and the applicable permit fee for the improvements. The plans and specifications shall be developed in accordance with 10 CSR 20-8.

35. Within 15 days receipt of department comments on the Respondent's construction permit application, facility plan, design summary, plans and specifications the Respondents agree and are ordered to respond to and adequately address, to the department's satisfaction, all of the department's comments.

36. Within 180 days of the date the department issues a construction permit for upgrades to the WWTF, the Respondents agree and are ordered to complete construction

pursuant to the plans and specifications and achieve compliance with the applicable effluent limitations contained in MSOP No. MO-0132861.

37. Within 30 days of completing construction, the Respondents are ordered to submit to the department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer registered in the state of Missouri certifying that the project was completed in accordance with department-approved plans and specifications and if applicable, a complete application for the modified operating permit, including applicable fee.

38. The Respondents are ordered and agree to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

SUBMISSIONS

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

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

OTHER PROVISIONS

40. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondents 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 days of notifying the department, the Respondents shall submit to the

department for review and approval a written request containing the same information. The department may grant an extension if it deems appropriate. Failure to submit a written notice to the department may constitute a waiver of the Respondents' right to request an extension and may be grounds for the department to deny the extension.

41. Should the Respondents fail to meet the terms of this AOC, including the deadlines for completion of corrective actions set out in Paragraphs 33 through 37, the Respondents 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 check made payable to "*Marion County Treasurer, as custodian of the Marion County School Fund*". Any such stipulated penalty shall be paid within ten days of demand by the department and shall be delivered to:

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

42. Compliance with this AOC resolves only the specific violations described herein, and this AOC 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.

43. Nothing in this AOC forgives the Respondents from future non-compliance with the laws of the state of Missouri, nor requires the department or state of Missouri to forego pursuing by any legal means any non-compliance 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, be they express or implied, oral or written, except those within are expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

44. 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.

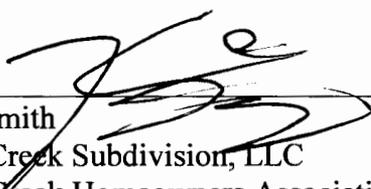
45. The effective date of the AOC shall be the date the department signs the AOC. The department shall send a fully executed copy of this AOC to the Respondents for their records.

NOTICE OF APPEAL RIGHTS

46. By signing this AOC, the Respondents consent 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.

SIGNATURE AUTHORITY

Agreed to and Ordered this _____ day of _____, 2015



Tory Smith
Clear Creek Subdivision, LLC
Clear Creek Homeowners Association

Agreed to and Ordered this 14th day of October, 2015



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

Copies of the foregoing served by certified mail to:

Mr. Tory Smith
Clear Creek Subdivision, LLC
Clear Creek Homeowners Association
6322 Highway F
Palmyra, MO 63461

c: Ms. Irene Crawford, Director, Northeast Regional Office
Mr. Jack McManus, Missouri Attorney General's Office
Ms. Diane Huffman, Environmental Protection Agency
Missouri Clean Water Commission
Accounting Program