

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
**Former Cres Vu Lodge** )  
**Wastewater Lagoon** )  
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 )  
**Proceeding under the** )  
**Missouri Clean Water Law** )

**Order No. 2015-WPCB-1357**

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**NOTICE AND ORDER TO ABATE VIOLATIONS**

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SERVE BY CERTIFIED MAIL # 7012 2920 0002 0660 7105  
RETURN RECEIPT REQUESTED

TO: Mr. Keith and Ms. Carrie Murray  
P.O. Box 531  
Lampe, MO 65681

SERVE BY CERTIFIED MAIL # 7012 2920 0002 0660 7099  
RETURN RECEIPT REQUESTED

AND: Mr. Anthony and Ms. Heather Mitchell  
P.O. Box 616  
Kimberling City, MO 65686

You are hereby notified that on this date the Department of Natural Resources has issued this Notice and Order to Abate Violations (Order) to Mr. Keith and Ms. Carrie Murray (the Murrays) and Mr. Anthony and Ms. Heather Mitchell (the Mitchells) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), 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 non-compliance may result in the department pursuing legal action for injunctive relief, additional penalties of up to \$10,000.00 per day for each day or part thereof

of non-compliance, 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. The Murrays own a piece of property zoned C-2 (Commercial) at 4390 State Highway H, in Lampe, Stone County, Missouri. Cres Vu Lodge, a 9-unit motel and three-bedroom house, was previously operated on the property under the former owner. According to the Stone County Assessor's Office, the Murrays acquired the property on February 2, 2012. During a conversation with department staff on March 15, 2012, Mrs. Murray stated that the Murrays planned to demolish the motel and use the property as a single-family residence.

2. The Mitchells own a piece of property at 4340 State Highway H, in Lampe, Stone County, Missouri. According to the Stone County Assessor's Office, the Mitchells acquired the property on May 9, 2008. An unpermitted, single cell wastewater treatment lagoon is located on the Mitchell's property. The Mitchells also own a neighboring piece of property directly to the northeast of 4340 State Highway H. According to the Stone County Assessor's Office, the Mitchells acquired this property on November 5, 2010.

3. Wastewater generated on the Murray's property is currently treated by the unpermitted lagoon located on the Mitchell's property. Wastewater intermittently from the unpermitted lagoon to Table Rock Lake.

4. Table Rock Lake is waters of the state as the term is defined by Section 644.016(27), RSMo.

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

6. It is unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in the state of Missouri unless such person holds a Missouri State Operating Permit (MSOP) pursuant to 644.051.2, RSMo.

7. On September 8, 2010, the department sent correspondence to the Mitchells explaining that the wastewater treatment lagoon serving their property is required to comply with the MCWL and its implementing regulations and that the lagoon was operating without an MSOP. The letter further stated that the outfall for the lagoon must be capped and the wastewater must be pumped out and hauled to a permitted wastewater treatment facility (WWTF) to prevent all illegal discharges.

8. On March 15, 2012, department staff conducted an environmental investigation of the Murray's and Mitchell's properties in response to an environmental concern. During the investigation, staff spoke with Ms. Carrie Murray and informed her that the lagoon is being operated and maintained in violation of the MCWL. Ms. Murray stated that they planned to install a septic tank and lateral field. Staff noted trees growing in the lagoon berm.

9. According to the Stone County Health Department's (Health Department) online septic permit database, on October 25, 2012, the Mitchells installed a Health Department-approved subsurface soil absorption system to treat wastewater generated on their property and disconnected from the unpermitted lagoon.

10. On February 6, 2014, department staff contacted Mr. Keith Murray by telephone to discuss the method of wastewater treatment at the Murray's property. Mr. Murray stated that they were about to install a subsurface septic system to serve the single-family residence.

11. On February 11, 2015, department staff contacted Mr. Murray by telephone. Mr. Murray stated that he was in the process of installing holding tanks and needed to install one tank to finish the project.

12. On February 17, 2015, department staff spoke with Health Department staff regarding the properties owned by the Murrays and the Mitchells. Health Department staff stated that the Murrays had not received a permit to install a subsurface soil absorption system. Health Department staff further explained that they had contacted Mr. Murray and informed him that a permit would be required if he wished to install a subsurface soil absorption system.

13. On April 30, 2015, department staff contacted Health Department staff by telephone. Health Department staff stated that during a recent site visit, they observed that the Murray's continue to use the lagoon located on the Mitchell's property. Health Department staff further stated that they observed a break in the pipe connecting the Murray's house to the lagoon and that raw sewage was spilling from the Murray's property onto the Mitchell's property.

14. The Murrays and Mitchells are operating, using, and maintaining a water contaminant source without an MSOP.

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

### **STATEMENT OF VIOLATIONS**

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

16. Operated, used or maintained a water contaminant source, domestic wastewater, which discharges to Table Rock Lake, waters of the state, without an MSOP, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

17. Caused pollution of Table Rock Lake, waters of the state, or placed or caused or permitted to be placed a water contaminant 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.

### **CORRECTIVE ACTIONS**

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

18. Immediately upon the effective date of this Order, the Murrays and the Mitchells are ordered to cease all discharge from the lagoon and pump and haul wastewater from the lagoon to a permitted WWTF with the capacity to treat the wastewater. The Murrays and the Mitchells are ordered to continue pumping and hauling wastewater, as necessary, to prevent any overflows or discharges of sewage to waters of the state until the effluent is no longer discharging and the wastewater method for the Murray's property is able to comply with the MCWL. Additionally, the Murrays and the Mitchells are ordered to maintain pumping and hauling receipts and make these receipts available to the department upon request. The records shall include the date the wastewater was pumped; number of gallons pumped; and the name of the wastewater hauler and the name and MSOP number of the WWTF accepting the wastewater.

19. Within 15 days of receipt of this Order, the Murrays are ordered to repair the pipe that was observed to be leaking during the Health Department's inspection, as described in Paragraph 13.

20. Within 15 days of receipt of this Order, the Murrays are ordered to submit correspondence to the department indicating which of the following options the Murrays have chosen to achieve compliance with the MCWL:

a. If the Murrays choose OPTION A:

i. Within 120 days of the effective date of this Order, the Murrays are ordered to meet all the minimum requirements of the Health Department to install a subsurface soil absorption system. These requirements include, but shall not be limited to, submitting an application for a construction permit to the Health Department and completing construction of the subsurface soil absorption system in accordance with the construction permit issued by the Health Department. The effluent from the subsurface soil absorption wastewater treatment system shall be contained on the property and handled in such a manner that there is no violation of the MCWL and Regulations.

b. If the Murrays choose OPTION B:

i. Within 30 days of the effective date of this Order, the Murrays are ordered to retain a professional engineer licensed to practice in the state of Missouri and submit a copy of the contract and letter from the engineer to the department stating that the engineer has been retained to develop an engineering report, plans, designs and specifications that relate to the

construction of a department-approved WWTF to serve the former Cres Vu Lodge;

- ii. Within 60 days of the effective date of this Order, the Murrays are ordered to submit to the department for review and approval an engineering report prepared by a professional engineer licensed to practice in the state of Missouri recommending wastewater treatment options for the Murrays that will result in compliance with the MCWL. The respondent is ordered to also submit a complete antidegradation submittal pursuant to the Missouri Antidegradation Rule and Implementation Procedure; and use these evaluations to recommend one of the alternatives that will result in compliance with the MCWL and its implementing regulations. The engineering report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8;
- iii. Within 15 days receipt of department comments on the engineering report, the Murrays ordered to respond in writing to the department addressing all department comments on the engineering report;
- iv. If the department approved alternative is to construct a new WWTF regulated by the department, the Murrays are ordered to submit to the department for review and approval, a complete application for a construction permit, plans, and specifications sealed by a professional engineer licensed to practice in the state of Missouri. The plans and specifications shall be developed in accordance with 10 CSR 20-8. The Murrays are ordered to

submit the application for a construction permit and applicable supporting documents to the department within 45 days of the date the department approves the engineering report;

- v. Within 180 days of the date the department issues a construction permit for WWTF construction, the Murrays are ordered to complete construction pursuant to the department approved plans and specifications and achieve compliance with all applicable permitted effluent limitations; and
- vi. Within 15 days of completing construction, the Murrays 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.

21. Within 60 days of the effective date of this Order, the Murrays and the Mitchells are ordered to submit to the department, for review and approval, a closure plan for the existing lagoon developed in accordance with the Standard Conditions, Part III, Section H, of Missouri State Operating Permits.

22. Within 90 days of installation of the subsurface soil absorption wastewater treatment system or completion of the new WWTF, the Murrays and the Mitchells are ordered to complete closure of the lagoon cell according to the department-approved closure plan, and submit a written report to the department documenting that the lagoon has been closed in accordance with the department-approved closure plan.

23. The Murrays and the Mitchells are ordered to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

### **SUBMISSIONS**

24. 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**

25. Any request for an extension of time or to otherwise modify this Order may be considered on a case-by-case basis, if the Murrays or the Mitchells make a written request to the department within 10 business days of this Order, and otherwise provide appropriate justification and/or documentation to the department in a timely manner. Any modification of this Order shall be in writing.

26. 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.

27. This Order shall apply to and be binding upon the Murrays and the Mitchells and any of their agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers,

agents, servants, corporations and any persons acting under, through, or for the Murrays and the Mitchells. 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 Murrays and the Mitchells of their obligation to comply with this Order.

28. For any plan or submittal from the Murrays and/or the Mitchells that is required by this Order and subject to department approval under this Order, the department may approve, disapprove, require revisions, or otherwise modify any such plan or submittal. Any such department decision shall be conveyed in writing to the Murrays and/or the Mitchells. Disapproval may result in further orders or pursuit of other forms of relief by the department. If the department requires revisions, the Murrays and/or the Mitchells shall submit a revised version of the plan or submittal within 10 business days after receiving notice of the department's required revisions, or within such other timeframe as the department may specify. If the department approves or modifies in writing such plan or submittal, it shall become enforceable under this Order, and the Murrays and/or the Mitchells shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

#### **NOTICE OF APPEAL RIGHTS**

29. 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

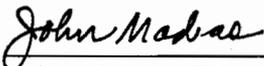
certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

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

**SIGNATURE AUTHORITY**

SO ORDERED this 22nd day of July, 2015 by:

DEPARTMENT OF NATURAL RESOURCES



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John Madras, Director  
Water Protection Program

c: Ms. Cindy Davies, Southwest Regional Office  
Mr. Jack McManus, Missouri Attorney General's Office  
Ms. Diane Huffman, Environmental Protection Agency  
Missouri Clean Water Commission  
Accounting Program