

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Lawrence and Judy Geary)
 Geary Mobile Home Park)
 22920 Hwy 25) **Order No. 2015-WPCB-1339**
 Bloomfield, MO 63825)
)
 Serve:)
 Lawrence Geary)
 Judy Geary)

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1339, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Mr. Lawrence Geary and Ms. Judy Geary (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. The respondents own Geary Mobile Home Park (MHP) which formerly consisted of 29 trailer homes with 23 of these homes served by individual septic systems with lateral lines, while the remaining six homes have no wastewater treatment system. The MHP currently has 19 mobile homes in service. Geary MHP is located in part of the NE ¼ of Section 36, Township 27 North, Range 10 East, being situated east of the east right-of-way line of Missouri State Highway 25 in Stoddard County, Missouri. The respondents have operated the MHP without a Missouri State Operating Permit (MSOP) since at least June 28, 2013, discharging untreated water into a tributary of Link Creek which is approximately 1.4 miles to Castor River.
2. Link Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.
3. On May 29, 2013, the department received a report of an environmental concern regarding wastewater from the MHP being discharged into the receiving stream. The sources of the wastewater were pipes coming from two of the trailers in the MHP. On August 29, 2013, department staff performed an investigation at the site. During the investigation, staff observed that there were more than seven lots less than five acres in size, and staff later discovered that the wastewater treatment facility (WWTF) for this property had not been approved by the department.
4. On September 26, 2013, the department issued a Letter of Warning (LOW) to the respondents as a result of the May 29, 2013, investigation. The LOW required the respondents to: (1) obtain a geohydrologic evaluation of the property; (2) obtain a soil

- survey of the property; (3) obtain a plat map of the development; and (4) submit these items to the department within 15 days receipt of the letter.
5. On November 19, 2013, the department received a Geohydrologic Groundwater Evaluation Rating for the MHP which stated that the Geological Survey Program (GSP) determined the MHP is exempt from obtaining a geohydrologic evaluation, therefore the minimum lot size for individual treatment systems shall be determined by the soils report.
 6. On January 2, 2014, the department sent a letter to the respondents stating the documentation required from the September 26, 2013, had not been received. The letter also stated the development of a WWTF would require an engineering report which discussed the current system and an evaluation of potential future WWTF for the MHP. Additionally, the letter required the respondents to submit all the previously requested documentation to the department within 30 days receipt of the letter and stated until the MHP receives written approval for the method of wastewater treatment from the department, the MHP remains in violation of the MCWL.
 7. On February 11, 2014, the department received an additional Geohydrologic Groundwater Evaluation Rating for the MHP from GSP stating no changes are necessary since GSP had already determined the MHP was exempt from the November 19, 2013, evaluation.
 8. On February 14, 2014, department staff performed a site visit at the MHP and met with the person that reported the environmental concern on May 29, 2013. During the visit, staff observed the two pipes discharging sewage into the receiving stream. Staff further documented a very strong sewage smell at this location.

9. On February 20, 2014, the department issued Notice of Violation (NOV) No. 19365 SE to the respondents based on violations observed during the February 14, 2014, investigation.
10. During a March 20, 2014, telephone conversation with department staff, the respondent informed staff that the six trailers which were discharging to the creek were being removed from the MHP. Respondent also explained Bowen Engineering and Surveying had been contacted and was advising them on wastewater treatment options to address the violations.
11. On September 9, 2014, the department received a soils report prepared by Mr. Kevin Godsey, Soil Scientist, for the MHP. After review of the soils report, on September 23, 2014, a soils report memo with the findings of the soils report was prepared by the department's soil scientist. The report stated that the minimum lot size for the use of individual onsite WWTF is two acres and the maximum number of residential units is nine.
12. 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:

13. Operated, used or maintained a water contaminant source, domestic wastewater, 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).

14. Since at least June 28, 2013, the respondents have caused pollution of a tributary to Link Creek, 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.
15. Since at least June 28, 2013, the respondents discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031.
16. Failed to obtain approval from the department for the method of sewage treatment and disposal in the MHP prior to the sale or lease of any lot, or the commencement of construction on any lot, by the developer or any person, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.030(1)(D).

AGREEMENT

17. 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.
18. 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.

19. The respondents, in compromise and satisfaction of the department's claims relating to the above referenced violations, agree without admitting liability or fault, to pay a penalty in the amount of \$8,000.00. The parties further agree that \$2,500.00 shall be paid upfront and the remaining \$5,500.00 will be suspended for a period of two years from the effective date of this AOC on the conditions the respondents comply with the conditions and requirements of this AOC and no further violations occur. The payment in the amount of \$2,500.00 shall be in the form of a check made payable to the "*Stoddard County Treasurer, as custodian of the Stoddard 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 65102-0176

20. The respondents agree and are ordered to reduce the total number of homes or residential units to nine or less in the MHP. The respondents agree and are ordered that they will not add any new homes or residential units to the MHP and as residents move from the MHP the respondents agree and are ordered that they will not replace those homes or residential units until the total number of home or residential units is reduced to nine or less.
21. Respondents agree and are ordered to evenly distribute the residential units throughout the property to allow each onsite WWTF a minimum of two acres per home or residential unit.

22. Respondents agree and are ordered to submit a written update to the department by January 28 of each year which details the number of residential units currently in the MHP and how the MHP has been reconfigured to comply with the minimum of two acres per residential unit until the total residential units in the MHP are nine or fewer.
23. Respondents agree and are ordered that once the number of units has been reduced to nine or less than nine units they will not expand the number of homes in the MHP without first obtaining written approval from the department. Respondents acknowledge that expanding the MHP to more than nine units without first obtaining department approval for the method of sewage disposal is a violation of the MCWL and its implementing regulations and subject to civil penalties of up to \$10,000.00 per day per violation.

SUBMISSIONS

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

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

OTHER PROVISIONS

25. 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.

26. Should the respondents fail to meet the terms of this AOC, including the conditions set out in Paragraphs 20 through 23, 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 “*Stoddard County Treasurer, as custodian of the Stoddard 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 65102-0176

27. 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.

28. 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.
29. 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.
30. 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

31. By signing this AOC, the respondents consents to its terms and waive 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 2 day of July, 2015

Lawrence R Geary
Lawrence Geary

Agreed to and Ordered this 29 day of June, 2015

Judy Geary
Judy Geary

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

John Madras
DEPARTMENT OF NATURAL RESOURCES
John Madras, Director
Water Protection Program

Copies of the foregoing served by certified mail to:

Mr. Lawrence and Mrs. Judy Geary
22920 Highway 25
Bloomfield, MO 63825

CERTIFIED MAIL # 7012 2920 0002 0660 7006

c: Ms. Diane Huffman, Environmental Protection Agency
Mr. Jackson Bostic, Director, Southeast Regional Office
Mr. Jim Gaughan, Department of Health and Senior Services
Missouri Clean Water Commission
Accounting Program