

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Gill Family Properties L.L.C.)
)
)
)
 Proceeding under the)
 Missouri Clean Water Law)

Order No. 2015-WPCB-1327

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

SERVE BY CERTIFIED MAIL # 7013 2250 0002 2840 1214
RETURN RECEIPT REQUESTED

TO: Chad B. Gill, Registered Agent
Gill Family Properties LLC
11547 Northview Drive
Dexter, MO 63841

You are hereby notified that on this date the Department of Natural Resources has issued this Notice and Order to Abate Violations and Pay Administrative Penalties to Gill Family Properties L.L.C. (respondent) 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, 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. Respondent owns a tract of land located in Section 20, Township 25 North, Range 6 East in Butler County, Missouri. The respondent has disturbed a portion of this tract of land in preparation for planned apartments, and currently operates the land disturbance site pursuant to the terms and conditions of Missouri State Operating Permit (MSOP) No. MO-RA02150. The permitted site includes 27.6 acres and is located at Highway W, Poplar Bluff, Missouri.

2. MSOP No. MO- RA02150 was issued October 15, 2012, and expires February 7, 2017. The MSOP authorizes the discharge of storm water from construction or land disturbance activity at the site in accordance with the effluent limitations and monitoring requirements set forth in the MSOP. The site is located in the watershed of Harwell Creek.

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

4. Sediment is a water contaminant as the term is defined in Section 644.016(24), RSMo.

5. Section 644.051.1(1) makes it unlawful for any person to cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state.

6. Section 644.051.1(2) makes it unlawful for any person to discharge water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established by the commission.

7. Section 644.076.1, RSMo makes it unlawful for any person to cause or permit any discharge of water contaminants from any water contaminant or point source in violation of the

MCWL, any standard, rule or regulation promulgated thereunder, or any MSOP issued by the Missouri Clean Water Commission.

8. On January 30, 2013, Department staff conducted a routine compliance inspection at the site. During the inspection, staff observed sediment moving off-site through a stormwater conveyance under Highway W. Staff found that the site's Storm Water Pollution Prevention Plan (SWPPP) failed to list any Best Management Practices (BMPs), and staff did not observe any BMPs to prevent erosion and sediment loss from the site. Department staff also documented that a log of weekly site inspections was not available for review, as required by the MSOP.

9. On February 7, 2013, the Department issued Mr. Robert Moss, of Gill Family Properties, a Letter of Warning (LOW) for violations observed during the January 30, 2013, site inspection. The inspection report required the respondent to install additional BMPs at the site and update the SWPPP to reflect the installation of the BMPs, and to maintain a log of weekly inspections at the site within seven days of receipt of the report. The respondent failed to respond to the LOW.

10. On May 23, 2013, Department staff conducted a compliance inspection at the site. Staff observed that a silt fence on the site was in need of maintenance, the site lacked a construction entrance as specified in the SWPPP and a public notification sign was not posted at the site. Staff also noted that a copy of the SWPPP was not available on-site, no SWPPP Site Map had been produced for the site and a log of weekly site inspections was not available for review.

11. On May 31, 2013, the Department issued Mr. Moss a LOW for violations observed during the May 23, 2013, site inspection. The inspection report required the

respondent to repair and maintain all BMPs at the site, provide a copy of the SWPPP at the site, implement all BMPs listed in the SWPPP, produce and make available a SWPPP Site Map at the site, maintain a log of weekly inspections at the site and post a public notification sign at the site within 14 days of receipt of the report. The respondent failed to respond to the LOW.

12. On September 4, 2013, Department staff conducted a routine compliance inspection at the site. Staff observed that a silt fence was in need of maintenance and a public notification sign was not posted at the site. Department staff also documented that a copy of the SWPPP was not available on-site, no SWPPP Site Map had been produced for the site and a log of weekly site inspections was not available for review.

13. On September 23, 2013, the Department issued Mr. Moss Notice of Violation (NOV) No. 19298SE for violations observed during the September 4, 2013, site investigation. The inspection report required the respondent to maintain and repair all BMPs employed at the site, provide a copy of the SWPPP at the site, procure and make available a SWPPP Site Map at the site, maintain a log of weekly inspections at the site and post a public notification sign at the site. The transmittal letter required the respondent to address the violations within 15 days of receipt of the NOV. The respondent failed to respond to the NOV.

14. On February 14, 2014, Department staff conducted a follow-up inspection at the site. Staff observed that a significant portion of the property remained unstabilized and the public notification sign was not posted at the site. Staff also observed a plume of sediment within the receiving stream, which left the site from a culvert under Highway W and flowed into an unnamed tributary of Harwell Creek. In addition, staff observed that sediment from soil placed near the site's outfall was only secured by a rock check dam and a vegetative barrier.

Staff noted that the vegetative barriers on site were too narrow to function properly and staff found that BMPs listed in the site's SWPPP were not followed and a SWPPP Site Map had not been produced for the site.

15. On March 21, 2014, the Department issued Mr. Moss NOV No. 19379SE for violations observed during the February 14, 2014 site investigation. The inspection report required the respondent to install and maintain additional BMPs at the site, repair and maintain existing BMPs at the site, submit a current copy of the SWPPP to the Department, send copies of recent weekly inspections to the Department, procure and make available a SWPPP Site Map at the site and post a public notification sign at the site. The Department also offered the respondent an opportunity to meet with the staff to discuss the violations. To date, the Department has not received a response from the respondent.

16. Department staff has observed on four separate occasions that the respondent failed to implement BMPs onsite to manage storm water and prevent sediment loss from the disturbed area. As a result, sediment discharged from the site and entered waters of the state. The sediment caused a violation of Missouri's Water Quality Standards (10 CSR 20-7.031) and poses a nuisance to downstream land owners. Sedimentation in the stream caused unsightly or harmful bottom deposits, turbidity and physical changes that would impair the natural biological community.

17. 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 moderate 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 \$4,501.00 to \$5,000.00. Additionally, the Department approximates that the respondent received an economic benefit of at least \$14,650.00 by its failure to implement and maintain adequate BMPs at the site and failure to provide an adequate SWPPP over the past 24 months. Since the Department documented three violations of the MCWL, and the respondent failed to correct the non-compliance after being informed of the requirements by the Department on at least three separate occasions and received a significant economic benefit by not complying with the MCWL, an administrative penalty in the amount of \$34,650.00 is justified.

18. This order is necessary to compel compliance and/or to prevent or eliminate threats to the environment.

STATEMENT OF VIOLATIONS

The respondent has violated the MCWL and its implementing regulations as follows:

19. On January 30, 2013, and February 14, 2014, caused pollution of a tributary to Harwell 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.

20. On February 14, 2014, discharged water contaminants into a tributary of Harwell Creek, waters of the state, which reduced the quality of waters of the state below water quality standards established by the Clean Water Commission in violation of Section 644.051.1(2) and 644.076.1, RSMo.

21. Since January 30, 2013, failed to develop and maintain a SWPPP and weekly inspection logs as required by MSOP No. MO-RA02150 in violation of Section 644.076.1, RSMo.

22. Since January 30, 2013, failed to implement and maintain BMPs for erosion and sediment control as required by MSOP No. MO-RA02150 in violation of Section 644.076.1, RSMo and 10 CSR 20-6.200.

CORRECTIVE ACTIONS

Pursuant to section 644.056 RSMo, the Department hereby orders the respondent to complete each of the following corrective actions:

23. Immediately upon receipt of this order, implement BMPs onsite to manage stormwater and prevent sediment loss from the disturbed areas to prevent violations of MSOP No. MO-RA02150 and Water Quality Standards established in 10 CSR 20-7.031.

24. Within 30 days of receipt of this order, submit to the Department for review and comment a SWPPP for the site which incorporates site specific practices to best minimize soil exposure, soil erosion and the discharge of pollutants, as required by MSOP No. MO-RA02150. The respondent shall select, install, use, operate and maintain appropriate BMPs for the site; all BMPs must be described and justified in the SWPPP.

25. Within 15 days of receipt of Department comments on the SWPPP, respondent shall respond in writing to the Department, addressing all Department comments on the SWPPP to the satisfaction of the Department.

26. If, after two comment letters, respondent fails to address all the Department's comments to the satisfaction of the Department, respondent shall hire a Certified Professional in

Erosion and Sediment Control (CPESC), or equivalent professional, to develop a SWPPP for the site in accordance with MSOP No. MO-RA02150. Respondent shall submit the SWPPP prepared by a CPESC within 30 days of receipt of the Department's third comment letter. If the Department comments on the revised SWPPP, within 15 days of receipt of Department comments, respondent shall respond in writing to the Department, addressing all Department comments on the SWPPP to the satisfaction of the Department.

27. Within 30 days of receipt of this order, respondent shall implement the SWPPP. Continuing throughout the life of the land disturbance project and until such time that the site has been stabilized and the Department terminates MSOP No. MO-RA02150, respondent shall update the SWPPP as site conditions change and maintain BMPs on the site in accordance with the SWPPP so as to prevent sediment loss from the site leading to violations of MSOP No. MO-RA02150 and Water Quality Standards established in 10 CSR 20-7.031.

28. Respondent shall conduct regularly scheduled inspections at least once per seven calendar days of all the erosion and sediment control structures onsite, and update the SWPPP as site conditions change. If rainfall causes storm water runoff to occur, the BMPs must be inspected within 48 hours after the rain event has ceased during a normal work day and within 72 hours if the rain event ceases during a non-work day, such as a weekend or holiday. If BMPs have been damaged or made ineffective, respondent shall correct the problem within seven calendar days.

29. Respondent shall maintain site inspection reports and a current copy of the site's SWPPP at the site during normal working hours and comply with all conditions and

requirements, including but not limited to maintenance and monitoring requirements, contained in MSOP No. MO-RA02150.

PENALTY

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

30. Within 30 days from the date of issuance of this order, the respondent shall pay to the Department an administrative penalty in the amount of \$34,650.00.

31. Such payment shall be made by check made payable to: *Butler County Collector as Custodian of the Butler County School Fund*.

32. Such payment must be delivered to the Department of Natural Resources, c/o Accounting Program, P.O. Box 176, Jefferson City, MO 65102, for forwarding to the Butler County Collector.

SUBMISSIONS

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

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

OTHER PROVISIONS

34. Any request for an extension of time or to otherwise modify this order may be considered on a case-by-case basis, if the respondent makes a written request to the Department

within ten 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.

35. 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.

36. This order shall apply to and be binding upon the respondent 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 respondent. 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 respondent of its obligation to comply with this order.

37. For any plan or submittal from the respondent 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 respondent. Disapproval may result in further orders or pursuit of other forms of relief by the Department. If the Department requires revisions, the Respondent shall submit a revised version of the plan or submittal within ten 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 respondent shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

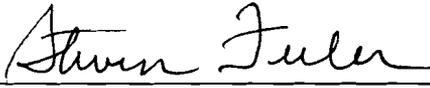
38. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 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

SIGNATURE AUTHORITY

SO ORDERED this 23rd day of January 2015 by:

DEPARTMENT OF NATURAL RESOURCES


for _____
Leanne Tippett Mosby, Director
Division of Environmental Quality

c: Mr. Jackson Bostic, Director, Southeast Regional Office
Mr. Jack McManus, Missouri Attorney General's Office
Missouri Clean Water Commission