

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:**

**Gill Family Properties, LLC**

**Respondent.**

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**Order No. 2015-WPCB-1327**

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

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This Amended Administrative Penalty Order amends, replaces, and renders ineffective a prior Notice and Order to Abate Violations and Pay Administrative Penalties numbered 2015-WPCB-1327 executed on January 23, 2015 and delivered to Chad B. Gill, Registered Agent for Gill Family Properties, LLC.

**NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1327, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Gill Family Properties, LLC (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. 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 did not 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 did not 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 did not 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 regarding the NOV.

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.

#### **STATEMENT OF VIOLATIONS**

The Department alleges the following violations of the MCWL and its implementing regulations:

17. On January 30, 2013, and February 14, 2014, Respondent 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.

18. On February 14, 2014, Respondent 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.

19. Since January 30, 2013, Respondent 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.

20. Since January 30, 2013, Respondent 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.

#### **AGREEMENT**

21. The Department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent for violations alleged above in Statement of Violations without Respondent admitting to the validity or accuracy of such claims.

22. 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 of the Respondent under this AOC.

23. The Respondent, in compromise and satisfaction of the Department's claims relating to the above referenced violations, agrees without admitting liability or fault, to pay a penalty in the amount of \$15,000. The payment in the amount of \$15,000 shall be in the form of a check made payable to the "*Butler County Treasurer, as custodian of the Butler 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: Department of Natural Resources, c/o Accounting Program, P.O. Box 176, Jefferson City, MO 65102, for forwarding to the Butler County Collector.

#### **OTHER PROVISIONS**

24. 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 Missouri Clean Water Law 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.

25. 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 noncompliance 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.

26. 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.

## NOTICE OF APPEAL RIGHTS

27. By signing this AOC, Respondent consents 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.

Agreed and ordered this 21st day of May, 2015.

  
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Department of Natural Resources

Agreed and ordered this \_\_\_\_ day of May, 2015.

  
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Gill Family Properties, LLC

C: Shawna Bligh, Attorney for Respondent  
Thais Folta, Attorney for DNR