

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
 **Infinity Resort Group, L.L.C.** )  
 **And Bernard F. Stein** ) **Order No. 2015-WPCB-1335**  
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 )  
 **Proceeding under the** )  
 **Missouri Clean Water Law** )

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**NOTICE AND ORDER TO ABATE VIOLATIONS**

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SERVE BY CERTIFIED MAIL # 7009 0080 0000 1910 4252  
RETURN RECEIPT REQUESTED

TO: Bernard F. Stein, Owner  
Infinity Resort Group, L.L.C.  
2120 Rustic Acres Road  
Kirbyville, MO 65679

You are hereby notified that on this date the Department of Natural Resources has issued this Notice and Order to Abate Violations to Infinity Resort Group, L.L.C. and Mr. Bernard F. Stein (respondents) 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 noncompliance 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 noncompliance, 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. Infinity Resort Group, L.L. C. owns a ten unit resort, known as Hideaway Lodge, located in the SW ¼, SE ¼, Section 7, Township 23 North, Range 20 West in Taney County, Missouri according to the county's assessment records. Wastewater from the units, which include kitchenettes, is collected and treated in an extended aeration wastewater treatment facility (WWTF) with chlorination. The WWTF has a design flow of 7,475 gallons per day that discharges directly into Taneycomo Lake, a Class L2 lake and a Section 303(d) water body listed for low dissolved oxygen concentrations, pursuant to Missouri State Operating Permit (MSOP) No. MO-0108154.

2. Infinity Resort Group, L.L.C. is a company that was administratively dissolved by the Missouri Secretary of State on March 14, 2014, due to the resignation of the company's registered agent, CECB Registered Agent, Inc., on October 30, 2013.

3. Taneycomo Lake and its tributaries are waters of the state as defined by Section 644.016(27), RSMo.

4. The department issued MSOP No. MO-0108154 to the respondents on June 29, 2010, and it is set to expire on June 28, 2015. MSOP No. MO-0108154 requires discharges from the WWTF to comply with the limitations contained in Part A of the MSOP. Pursuant to Part I, Section A.1, Standard Conditions of MSOP No. MO-0108154, if there is a discharge at any time during the reporting period, the respondents are required take a representative sample and chemically analyze the effluent for water contaminants listed in Part A of the MSOP and submit the results to the department on a quarterly Discharge Monitoring Report (DMR) on or before the 28<sup>th</sup> day of the month following the reporting period.

5. MSOP No. MO-0108154 contains two Schedules of Compliance (SOCs) for Total Residual Chlorine (TRC) and Ammonia, respectively. The SOC for TRC required the respondents to submit an application for a construction permit for dechlorination to the department by November 1, 2010, and complete construction within 180 days of the issuance of the construction permit. The SOC for Ammonia required the respondents to comply with final effluent limitations for Ammonia by May 30, 2013.

6. The department has not received Annual Sludge Reports for 2011, 2012, 2013 and 2014 as required by Part C, Special Conditions in MSOP No. MO-0108154.

7. The department has not received DMRs for the fourth quarter of 2011 and all quarters of 2012, 2013 and 2014 as required by MSOP No. MO-0108154.

8. On August 21, 2013, the department issued Letter of Warning (LOW) No. BFUCWL1779 to the respondents for failure to pay the 2013 MSOP fee. The LOW required the respondents to remit payment of the fee within 30 days of receipt of the LOW. The department did not receive the payment for the 2013 MSOP fee.

9. On September 6, 2013, the department issued Notice of Violation (NOV) No. 14964SW to the respondents for failure to submit DMRs for the first and second quarters of 2013. The NOV required the respondents to submit a written response to the department that addressed the actions taken to correct the violation within 15 days of receipt of the NOV. The department did not receive a response to the NOV.

10. On September 15, 2013, the department issued NOV No. BFUCWN100213 to the respondents for failure to pay the 2013 MSOP fee. The NOV required the respondents to remit

payment of the fee within 15 days of receipt of the NOV. The department did not receive payment for the 2013 MSOP fee.

11. On March 5, 2014, the department issued NOV No. 15229SW to the respondents for failure to submit DMRs for the third and fourth quarters of 2013. The NOV required the respondents to submit a written response to the department that addressed the actions taken to correct the violation within 15 days of receipt of the NOV. The department did not receive a response to the NOV.

12. On April 30, 2014, department staff conducted a compliance inspection of the WWTF. Mr. Stein, who was present for the inspection, stated that wastewater had not flowed into the WWTF since the tornado had struck the property on February 29, 2012, and that there was no power at the resort or WWTF. During the inspection, staff observed that the WWTF was not equipped with dechlorination, the WWTF lacked a flow measurement device, the WWTF's outfall was not marked, and the WWTF did not have warning signs posted on the perimeter fence. During a review of department records, staff discovered that DMRs from the fourth quarter 2011 to the first quarter 2014 and Annual Sludge Reports from 2011, 2012 and 2013 were not received by the department, and the department did not receive payment of MSOP fees and late penalties for 2012 and 2013, which totaled \$528.00.

13. On June 11, 2014, the department issued NOV No. 15471SW to the respondents for violations documented during the April 30, 2014, inspection. The inspection report that accompanied the NOV required the respondents to take corrective actions to resolve the violations within 10 days of the date of the NOV. The department did not receive a response to the NOV.

14. On August 11, 2014, the department issued LOW No. BFUCWL2450 to the respondents for failure to pay the 2014 MSOP fee. The LOW required the respondents to remit payment of the fee within 30 days of receipt of the LOW. The department did not receive payment of the 2014 MSOP fee.

15. On September 3, 2014, department staff conducted a compliance inspection of the WWTF. During the inspection, staff observed the following conditions: 1) the WWTF was overgrown with vegetation; 2) the WWTF did not have warning signs posted on the perimeter fence; 3) the bar screen was in need of cleaning; 4) the WWTF lacked two operational blower motors; 5) the chlorinator did not contain chlorine tablets; 6) no dechlorination system was installed; and 7) the WWTF's outfall was not marked. Heavy vegetative growth prevented staff from obtaining samples from the WWTF's outfall. During a review of department records, staff discovered that the department had not received DMRs since the third quarter 2011, Annual Sludge Reports for 2011, 2012 and 2013 or any documentation pursuant to the SOC in the MSOP for Ammonia. The department also had not received payment of MSOP fees for 2012, 2013 and 2014, which totaled \$768.00.

16. On September 19, 2014, the department issued NOV No. BFUCWN100512 to the respondents for failure to pay the 2014 MSOP fee. The NOV required the respondents to pay the fee within 15 days of receipt of the NOV. The department did not receive payment for the 2014 MSOP fee.

17. On October 8, 2014, the department issued NOV No. 15752SW to the respondents for violations observed during the September 3, 2014, inspection. The inspection

report that accompanied the NOV required the respondents to take corrective actions and resolve the violations.

18. On October 28, 2014, the department received the returned October 8, 2014, NOV and inspection report in the mail. The envelope was marked "refused."

19. On December 10, 2014, the department issued NOV No. 15877SW to the respondents for failure to submit DMRs for the second and third quarters of 2014. The NOV required the respondents to submit a written response to the department addressing the corporate actions or intended actions to correct the violations noted in the NOV within 15 days of the effective date of the NOV. The department did not receive a response to the NOV.

20. As of the date of this order, the respondents have failed to complete upgrades to the WWTF to comply with effluent limitations for TRC and Ammonia as required by Part D, SOC of MSOP No. MO-0108154.

21. As of the date of this order, the department has not received payment for MSOP fees for 2012, 2013 and 2014, which currently total \$840.00 in fees and late penalties.

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

### **STATEMENT OF VIOLATIONS**

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

23. Starting April 30, 2014, and continuing until sometime before September 3, 2014, failed to install a flow measurement device at a WWTF in violation of Section 644.076.1, RSMo, and 10 CSR 20-8.020(11)(C)9.

24. Since April 30, 2014, failed to post warning signs on each side of the enclosure of a WWTF in violation of Section 644.076.1, RSMo, and 10 CSR 20-8.020(11)(C)11.G.

25. Since April 30, 2014, failed to clearly mark a WWTF outfall as required by Part C, Special Conditions of MSOP No. MO-0108154 in violation of Section 644.076.1, RSMo.

26. Since April 30, 2014, failed to operate and maintain a WWTF to comply with the MCWL and applicable permit conditions by failing to maintain the chlorine contact chamber in working order in violation of Sections 644.051.1(3) and 644.076.1, RSMo, and 10 CSR 20-8.020(13)(D).

27. Since September 3, 2014, failed to provide at least two working blower motors for a WWTF aeration tank in violation of Sections 644.051.1(3) and 644.076.1, RSMo., and 10 CSR 20-8.020(13)(B)6.E.

28. Since September 3, 2014, failed to maintain a bar screen at a WWTF in violation of Section 644.076.1, RSMo, and 10 CSR 20-8.020(12)(B).

29. Since April 30, 2014, failed to upgrade a WWTF and submit reports as required in Parts B and D of MSOP No. MO-0108154 in violation of Section 644.076.1, RSMo, 10 CSR 20-6.010(7)(A) and 10 CSR 20-6.010(7)(C).

30. Since April 28, 2013, failed to submit DMRs as required in Part A of MSOP No. MO-0108154 in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1.

31. Since January 28, 2014, failed to submit Annual Sludge Reports as required in Part B of MSOP No. MO-0108154 in violation of Section 644.076.1, RSMo.

32. Since June 30, 2013, failed to remit annual permit fees and late penalties in violation of Sections 644.052.1 and 644.076.1, RSMo., and 10 CSR 20-6.011(1)(G).

33. Since December 30, 2014, failed to apply for renewal of the MSOP at least 180 days before expiration of the MSOP No. MO-0108154 in violation of Sections 644.051.10 and 644.076.1, RSMo, and 10 CSR 20-6.010(5)(C).

### **CORRECTIVE ACTIONS**

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

34. From the date of this order, the respondents are ordered to cease all discharges from the WWTF and pump and haul wastewater from the WWTF to a permitted WWTF with the capacity to treat the wastewater. The respondents are ordered to continue pumping and hauling wastewater, as necessary, to prevent any overflows or discharges of sewage to waters of the state until either upgrades for all applicable final effluent limitations approved by the department have been constructed at the WWTF or the WWTF is closed in accordance with to a department-approved closure plan. Additionally, the respondents are ordered to maintain pumping and hauling receipts and make these receipts available to the department by the tenth day of the month following the month that the receipts are written. The receipts shall include the date that the wastewater was pumped; number of gallons pumped; the name of the wastewater hauler and the permitted WWTF accepting the wastewater. If the respondents did not pump and haul wastewater from the WWTF during the previous month, the respondents are ordered to submit a written statement to the department by the tenth day of the subsequent month:

- 1) indicating that no pumping and hauling occurred during that period; 2) providing an explanation of why these activities were not conducted; and 3) if applicable, reporting any discharge from the WWTF that occurred during that period.

35. The respondents are ordered to submit to the department complete, accurate and timely DMRs on or before the 28<sup>th</sup> day of the month following the monitoring period as required by Part I, Section A.1, Standard Conditions of MSOP No. MO-0108154. If there is no discharge from the WWTF during a reporting period, the respondents are ordered to report “no discharge” on the DMR for that period.

36. The respondents are ordered to submit complete, accurate and timely Annual Sludge Reports on or before January 28 of the year following the monitoring period as required by Part III, Section J.2.a, Standard Conditions of MSOP No. MO-0108154.

37. Within 30 days of receipt of this order, the respondents are ordered to submit to the department a complete renewal application for MSOP No. MO-0108154.

38. Within 30 days of receipt of this order, the respondents are ordered to install or repair the following features or appurtenances to the WWTF:

- i. Post warning signs on all sides of the WWTF’s enclosure.
- ii. Clearly mark the WWTF’s outfall.
- iii. Repair the second blower motor at the WWTF to provide sufficient aeration to the WWTF’s aeration basin.

39. Within 30 days of receipt of this order, respondents are ordered to submit all DMRs from 2013 and 2014 to the department. If the respondents are unable to submit the missing DMRs, the respondents are ordered to submit to the department a written response explaining why the respondents are unable to submit the DMRs and an explanation of actions taken to prevent a reoccurrence of the violation in the future.

40. Within 30 days of receipt of this order, respondents are ordered to submit Annual Sludge Reports from 2013 and 2014 to the department. If the respondents are unable to submit the missing Annual Sludge Reports, the respondents are ordered to submit to the department a written response explaining why the respondents are unable to submit the reports and an explanation of actions taken to prevent a reoccurrence of the violation in the future.

41. Within 60 days of receipt of this order, the respondents shall submit to the department for review and approval an engineering report, prepared by a professional engineer licensed to practice in the state of Missouri, evaluating the WWTF and its ability to comply with the applicable effluent limitations, including but not limited to, TRC, Ammonia as Nitrogen and all conditions and requirements of MSOP No. MO-0108154 and 10 CSR 20-8.020. Although not required at this time, the report may also include alternatives that will result in compliance with the final effluent limitations for Ammonia as Nitrogen based on the U.S. Environmental Protection Agency's April 2013 Aquatic Life Ambient Water Quality Criteria for Ammonia-Freshwater. The engineering report shall identify alternatives to upgrade, replace or eliminate the WWTF that will result in compliance with all effluent limitations contained in MSOP No. MO-0108154. If applicable, the respondents are also ordered to 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.

42. Within 15 days of receipt of department comments on the engineering report or Antidegradation submittal, the respondents are ordered to respond to the department in writing

addressing all department comments on the engineering report or Antidegradation submittal to the department's satisfaction.

43. If the department-approved alternative is to upgrade or replace the WWTF, the respondents 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 and the applicable permit fee for the improvements recommended in the department-approved engineering report. The plans and specifications shall be developed in accordance with 10 CSR 20-8. The respondents 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. Pursuant to 10 CSR 20-6.010(3), the construction permit application shall identify the higher preference continuing authority for the WWTF, or include a letter from the higher continuing authority waiving its preferential authority.

44. If the department-approved alternative is connection to an area-wide wastewater treatment and collection system, the respondents are ordered to complete construction of a sewer extension within 180 days of the date the department approves the engineering report. The sewer extension shall be designed and sealed by a professional engineer registered in the state of Missouri in accordance with 10 CSR 20-8 and shall be constructed in accordance with the registered professional engineer's designs and plans. If the sewer extension and collection system will be greater than or equal to 1,000 feet in length and will include more than two lift stations, the respondents 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 registered in the state of Missouri and the applicable permit fee for the sewer extension. Prior to beginning construction of the sewer extension, the respondents are ordered to obtain all necessary easements, approval from the municipality accepting the connection, and if applicable, a construction permit from the department. If a construction permit is not required for the sewer extension, the respondents are ordered to submit to the department a copy of the plans and specifications sealed by a professional engineer licensed to practice in the state of Missouri within 30 days prior to beginning construction of the sewer connection.

45. If the existing WWTF is to be abandoned, the respondents are ordered to submit to the department for review and approval a closure plan developed in accordance with Standard Conditions, Part III, Section H within 180 days of the date the department approves the engineering report. If the existing WWTF will be incorporated into the new department-approved WWTF, a closure plan will not be required.

46. Within 15 days of receipt of department comments on the closure plan, the respondents are ordered to respond in writing to the department addressing all department comments on the closure plan to the department's satisfaction.

47. Within 180 days of the date the department issues a construction permit for WWTF upgrades, or approves the plans and specifications for sewer extension to connect to an area-wide wastewater treatment and collection system, the respondents are ordered to complete construction pursuant to the department-approved plans and specifications and achieve compliance with all applicable permitted effluent limitations or divert the flow from Hideaway Lodge to the area-wide treatment and collection system.

48. Within 15 days of completion of construction activities, the respondents are ordered to submit to the department a Statement of Work Completed form, signed, sealed and dated by a professional engineer licensed to practice 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 reissued MSOP, including applicable fee.

49. If applicable, within 120 days of diverting the wastewater flow from the WWTF to a department-approved WWTF or an area-wide wastewater treatment and collection system, but not before receiving written approval from the department for the WWTF closure plan, the respondents are ordered to: 1) complete closure of the WWTF pursuant to the closure plan as approved by the department; 2) stabilize the disturbed area with perennial vegetation with 70 percent fully established plant diversity over the entirety of the disturbed area; and 3) submit to the department a letter certifying that the WWTF was closed pursuant to the closure plan approved by the department. In the event the wastewater flow from Hideaway Lodge is connected to an area-wide wastewater treatment and collection system, the respondents are ordered to submit to the department an application to terminate MSOP No. MO-0108154 at the time the WWTF has been closed in accordance with the department-approved closure plan and the site is stabilized, as referenced in Part 2 from above.

50. Immediately upon becoming aware that a deadline or milestone as set forth in this order will not be completed on time, the respondents are ordered to notify the department by telephone or electronic mail, identifying: 1) the deadline that will not be completed; 2) the reason for failing to meet the deadline; and 3) a proposed extension to the deadline. Within five days of notifying the department, the respondents are ordered to submit to the department for review and

approval a written request containing the same provisions of Parts 1, 2 and 3 from above. 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 respondents an extension.

### **SUBMISSIONS**

51. 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**

52. Any request for an extension of time or to otherwise modify this order may be considered on a case-by-case basis, if the respondents make 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.

53. 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. Nothing herein this order compromises or affects the department's right to seek additional relief or asserting additional claims for civil

penalties for past or future violations of the MCWL. 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.

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

55. For any plan or submittal from the respondents 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 respondents. Disapproval may result in further orders or pursuit of other forms of relief by the department. If the department requires revisions, the respondents 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 respondents shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

**NOTICE OF APPEAL RIGHTS**

56. 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 April 2015 by:

DEPARTMENT OF NATURAL RESOURCES

  
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John Madras, Director  
Water Protection Program

c: Ms. Cindy Davies, Director, Southwest Regional Office  
Mr. Jack McManus, Missouri Attorney General's Office  
Missouri Clean Water Commission