

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 John Werdehausen)
 Laurwood Estates)
 276 Major Terrace) **Order No. 2015-WPCB-1352**
 Holts Summit, MO 65043)
)
 Serve:)
 John Werdehausen)
)

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1352, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Mr. John Werdehausen (Respondent) 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 Respondent 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 Respondent owns and operates Laurwood Estates Mobile Home Park (MHP) located at Laurwood Drive and Julie Lane in Holts Summit, Missouri. The MHP consists of approximately 20 mobile homes all served by a septic tank, with sludge disposed of by contract hauler, and a recirculating sand filter system wastewater treatment plant (WWTP) located at the end of Laurwood Drive. The WWTP is located in the NW ¼, NW ¼, SW ¼, of Section 30, Township 45 North, Range 10 West, in Callaway County. The WWTP discharges treated effluent to a tributary to Rivaux Creek pursuant to the requirements and conditions of Missouri State Operating Permit (MSOP) No. MO-0122360. Rivaux Creek, located approximately 3.58 miles downstream of the discharge, is a Class C stream, and has beneficial uses of livestock and wildlife watering, protection of warm water aquatic life and human health-fish consumption, Category “B” whole body contact recreation.
2. MSOP No. MO-0122360 was issued July 29, 2011, and expires July 28, 2016. The MSOP authorizes the discharge of wastewater from the WWTP in accordance with the effluent limitations and monitoring requirements set forth in the MSOP and included a Schedule of Compliance (SOC) to meet final effluent limitations and monitoring requirements for Ammonia by July 29, 2014.
3. Rivaux Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.
4. Ammonia is a water contaminant as the term is defined in Section 644.016(24), RSMo.

5. On April 1, 2011, the department issued a letter to the Respondent informing him that, during the technical review portion of the MSOP renewal process, it was determined that the discharge from the WWTP has the potential to cause or contribute to an Ammonia criteria violation. The letter requested the Respondent to submit a letter to the department stating which method he had chosen to use in order to calculate if any Ammonia decay occurs in the receiving stream or, should he choose to not conduct the study of the effluent, he would chose to accept the effluent limits that allow for no Ammonia degradation.
6. On March 11, 2014, the department received a letter from the Respondent stating that he was still working on getting the Ammonia to a desired level and requested that the department please share any information we have on any new methods of achieving the desired level in an economic manner.
7. On August 12, 2014, the department conducted a routine compliance inspection of the WWTP. The department asked the Respondent what his intentions were to meet final effluent limits for Ammonia and asked if any upgrades had been done. The Respondent informed staff no upgrades had been completed and that the MHP would be connected to the city of Holts Summit sewer system. During the inspection, department staff observed the lagoon was discharging from the WWTPs outfall and collected samples of the effluent which exceeded the WWTPs MSOP Ammonia monthly average limits with a concentration of 9.09mg/L. Department staff observed that WWTP was not being maintained, and based on the observations made during the inspection, the department determined the WWTP was found to be in non-compliance with the MCWL. Prior to the

inspection, during a file review, the department discovered the no Form S – Domestic Sludge Reporting forms had been received for the WWTP since at least 2011.

8. On September 9, 2014, the department issued a Notice of Violation (NOV) No. NER2014082514055070 to the Respondent based on the findings of the August 12, 2014, inspection. The department requested that the Respondent address the Required Actions and Unsatisfactory Features for the NOV and submit the corrections made to the department by September 30, 2014. To date, the department has not received a response.
9. On September 12, 2014, the department issued a letter to the Respondent detailing the sample results from the August 12, 2014, inspection which exceeded the effluent limitation parameter for Ammonia. The letter also stated that this violation was part of the NOV issued on September 9, 2014.
10. On September 17, 2014, the department received a letter from the Respondent stating that the MHP was annexed into the city of Holts Summit.
11. On February 20, 2015, the department received Annexation Agreements from the city of Holts Summit's City Administrator that documents the MHP had been annexed into the city of Holts Summit on August 11, 2014. The city Administrator also explained that the MHP's WWTP had not yet been connected to the city's sewer system; however, the city, the engineers and the Respondent were working together to get the final steps done to finish the project which are: paying the connection fees, drawing up easements and then actually completing the connection of the systems. There was no estimated date of completion given.

12. On April 21, 2015, the department received a letter from the Respondent stating that the MHP had been annexed to the city of Holts Summit and that the sewer system would be connected once the egress easement for the road and sewer main is signed and recorded.
13. On June 25, 2015, the department received a letter from the Respondent's engineer on behalf of the Respondent which detailed the closure plan for the existing WWTP. Also included with the letter were copies of the deed of easement signed on May 28, 2015; a sewer hookup fee receipt from the city of Holts Summit paid on June 3, 2015; and a letter from the city of Holts Summit giving the Respondent permission to connect to the city's sanitary sewer system.
14. On October 5, 2015, the department sent the Respondent a letter approving the closure plan for the existing WWTP.
15. Section 644.076.1, RSMo makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes penalties up to \$10,0000.00 per day per violation.

STATEMENT OF VIOLATIONS

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

16. Failed to complete upgrades to the WWTP, as required in Part "D", SOC, of MSOP No. MO-0122360 in violation of Sections 644.076.1 RSMo, and 10 CSR 20-6.010(7)(A).
17. Failed to comply with the effluent limits contained in Part "A" of MSOP No. MO-0122360 from August 2014 through January 2015 in violation on Sections 644.051.1(3) and 644.076.1, RSMo.

18. Failed to submit annual Form S – Domestic Sludge Reporting forms as required by the Standard Conditions of MSOP No. MO-0122360 in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(D)1.
19. Failed to operate and maintain WWTP to comply with the MCWL and applicable permit conditions in violation of Sections 644.051.1(3) and 644.076.1, RSMo; and
20. Caused pollution of a tributary to Rivaux 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 Section 644.051.0(1) and 644.076.1, RSMo.

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.
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 as the Respondent under this AOC.
23. The Respondent, 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 \$1,000.00 shall be paid upfront and the remaining \$7,000.00 will be suspended for a period of two years from the

effective date of this AOC on the conditions the Respondent complies with the conditions and requirements of this AOC and no further violations occur. The payment in the amount of \$1,000.00 shall be in the form of a check made payable to the “*Callaway County Treasurer, as custodian of the Callaway County School Fund*” and is due and payable upon execution of this AOC by the Respondent. 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

24. Within 15 days of the effective date of this agreement, the Respondent agrees and is ordered to submit to the department a letter of authorization, Statement of Work Completed (SOWC), or certification of construction from a professional engineer licensed to practice in the state of Missouri certifying that the MHP has been connected to the city of Holts Summit sewer system in accordance with the department approved plans and specifications.
25. Within 30 days of the effective date of this agreement, the Respondent agrees and is ordered to complete the closure of the WWTP as approved by the department and submit to the department a complete and approvable Request for Termination of MSOP No. MO-0122360.

SUBMISSIONS

26. 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

27. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent 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 Respondent 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 Respondent's right to request an extension and may be grounds for the department to deny the extension.
28. Should the Respondent fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs 21 through 28, the Respondent 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 “*Callaway County Treasurer, as custodian of the Callaway 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

29. 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.
30. Nothing in this AOC forgives the Respondent 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.
31. 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.

32. 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 Respondent for his records.

NOTICE OF APPEAL RIGHTS

33. By signing this AOC, the 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.

SIGNATURE AUTHORITY

Agreed to and Ordered this 7 day of Dec., 2015



John Werdehausen

Agreed to and Ordered this 18th day of December, 2015



DEPARTMENT OF NATURAL RESOURCES
John Madras, Director
Water Protection Program

Copies of the foregoing served by certified mail to:

Mr. John Werdehausen
276 Major Terrace
Holts Summit, MO 65043

CERTIFIED MAIL # 7012 2920 0002 0660 6306