

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI**

IN THE MATTER OF:

Weaver Creek Investments, LLC
and Landmark Building
and Development Company, LLC
Weaver Creek Apartments

SERVE:

Mr. Tom Morris, Registered Agent
Weaver Creek Investments, LLC
1713 West Regency
Nixa, MO 65714

Ms. Brandi Morris, Registered Agent
Landmark Building and Developing Company, LLC
1713 West Regency
Nixa, MO 65714

No. 2015-WPCB-1261

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuance of this Abatement Order on Consent (AOC) No. 2015-WPCB-1261 by the Department of Natural Resources is a formal administrative action by the state of Missouri and is being issued because Mr. Tom Morris, Weaver Creek Investments, LLC and Ms. Brandi Morris, Landmark Building and Developing Company, LLC violated the Missouri Clean Water Law (MCWL) and its implementing regulations at the land development site known as Weaver Creek Apartments. 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. Litigation may occur without further 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 of 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 parties of liability for, or preclude the Department from, initiating a judicial enforcement action to recover civil penalties for any violations of the MCWL or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. Weaver Creek Investments, LLC and Landmark Building and Developing Company, LLC, own and are developing a site planned for two building pads for future apartment buildings. The site is located in the NE ¼, NE ¼, Section 23, Township 28

North, Range 22 West, Greene County, Missouri. The project area is approximately 2.07 acres which have been disturbed by clearing, grading, and/or fill activity within the city limits of Springfield. Stormwater from the site discharges to a tributary to Ward Branch, in which Ward Branch is classified as a losing setting.

- B. On July 26, 2007, the Department issued Missouri State Operating Permit (MSOP) land disturbance permit No. MO-R109R57 to Landmark Building and Developing Company, LLC for land disturbance activity at Walnut Creek, also known as Weaver Creek Apartments. MSOP No. MO-R109R57 expired on its own terms March 7, 2012.
- C. On April 20, 2012, Department staff conducted a complaint investigation of the site, after receiving a telephone call from a concerned party on April 4, 2012, stating that nearly three acres had been disturbed without an MSOP from the city of Springfield or the Department. During the inspection, staff found that there are two acres that appeared to have been graded and filled for building pads that were $\frac{3}{4}$ of an acre and $1\frac{1}{2}$ acres just west of South Main Avenue and a five to six acre area where fill had been brought in from off-site. Staff observed approximately eight acres disturbed on this date with very few Best Management Practices (BMPs) in place to control the transport of silt off-site. In addition, staff documented that the site was not currently covered by an MSOP.
- D. Based on the violations documented during the April 20, 2012, investigation, the Department issued a Letter of Warning (LOW) to Mr. Tom Morris on May 10, 2012, for operating without a MSOP for land disturbance on his property near Weaver Creek Apartments.
- E. On June 22, 2012, the Department sent a letter to Mr. Morris offering an opportunity to meet with Mr. Morris at the Southwest Regional Office on July 10, 2012, at 10:00 a.m. Mr. Morris did not respond to this letter or attend the scheduled meeting.
- F. On September 7, 2012, Department staff conducted a compliance inspection of the site. During the inspection, staff observed a disturbed area of the lower building pad mostly covered with annual volunteer vegetation, no measures were taken to direct stormwater flows into the basin from along the tree line and sediment in the street and in front of the storm drain outlet. Staff also observed minor red staining and sediment deposits at the outlet for stormwater to enter the tributary to Ward Branch.
- G. Based upon the violations documented during the September 7, 2012, inspection, on October 10, 2012, the Department issued a Notice of Violation (NOV) No. 14421SW to Mr. Morris for disturbing land without an MSOP. The NOV required Mr. Morris to obtain the required land disturbance permit, comply with its conditions and requirements, particularly the primary requirement of developing and implementing a Storm Water Pollution Prevention Plan (SWPPP), install a BMP that will direct stormwater from the area into the retention basin, clean all sediment off of roadways, curbs and from storm drain inlets and ensure all inlets are protected by an appropriate BMP.
- H. On December 31, 2014, Department staff spoke with Mr. Morris, Registered Agent, Weaver Creek Investments, LLC, who stated land disturbance activities have ceased.

- I. Section 644.076.1 RSMo; makes it unlawful to violate the MCWL and regulations promulgated thereto and establishes civil penalties of up to \$10,000.00 per day per violation.

III. CONCLUSIONS OF LAW

A Violation of the MCWL, its implementing regulations alleged herein and found to have been committed by the parties at the site includes:

1. Operated, used, or maintained a water contaminant source, stormwater from land disturbance activity, which intermittently discharges to a tributary to Ward Branch, waters of the state, without a MSOP, in violation of, Sections 644.0512, 644.076.1, and 578.215.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

IV. AGREEMENT

- A. The Department and the parties desire to amicably resolve all claims that may be brought against the parties for violations alleged above in Section III, Citations and Conclusions of Law, without the parties admitting to the validity or accuracy of such claims.
- B. 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 parties under this AOC.
- C. The parties agree and are ordered to obtain a general permit for land disturbance activities from the Department and prior to initiating future land disturbance activities in the state of Missouri, which would disturb one acre or more.
- D. Nothing in this AOC forgives the parties 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 for 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 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.
- E. 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.
- F. 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 parties for their records.

G. The parties shall comply with the law, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

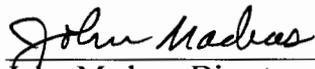
By signing AOC No. 2015-WPCB-1261, the parties waive any right of appeal pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC No. 2014-WPCB-1261 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

VI. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

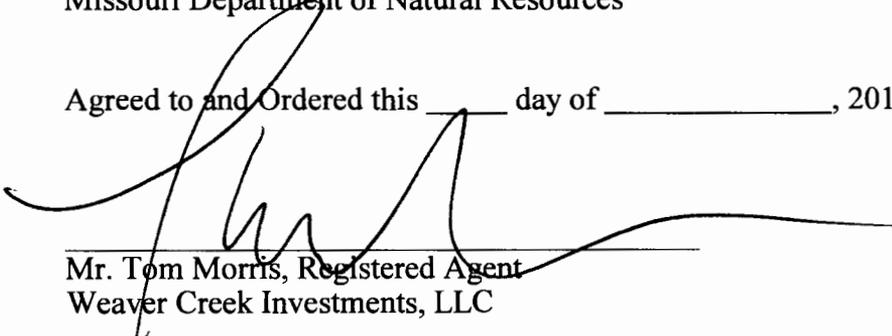
Ms. Erin Meyer
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 30~~14~~ day of March, 2015



John Madras, Director
Water Protection Program
Missouri Department of Natural Resources

Agreed to and Ordered this _____ day of _____, 2015



Mr. Tom Morris, Registered Agent
Weaver Creek Investments, LLC



Ms. Brandi Morris, Registered Agent
Landmark Building and Developing Company, LLC

Copies of the foregoing served by certified mail to:

Mr. Tom Morris
Registered Agent
Weaver Creek Investments, LLC
1713 West Regency
Nixa, MO 65714

CERTIFIED MAIL # 7013 2250 0002 2840 1030

Ms. Brandi Morris, Registered Agent
Landmark Building and Developing Company, LLC
1713 West Regency
Nixa, MO 65714

CERTIFIED MAIL # 7013 2250 0002 2840 1054

- c. Ms. Diane Huffman, Environmental Protection Agency
Mr. Chris Wieberg, Chief, Operating Permits Section
Accounting Program
Ms. Cindy Davies, Director, Southwest Regional Office