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RACHELLE K. BEASLEY

JAN 14 2015

CIRCUIT CLERK & EX. OFFICER
RECORDS & DEEDS
PULASKI COUNTY, MISSOURI

IN THE CIRCUIT COURT OF PULASKI COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
Chris Koster, the Attorney)
General of Missouri, and the)
Missouri Department of)
Natural Resources,)
)
Plaintiff,)
)
v.)
)
WOODLAND CONSTRUCTION CO.,)
LLC, and CURTIS L. COX)
)
Defendants.)

RECEIVED

DEC 18 2014

WATER PROTECTION PROGRAM

Case No. BPU-CV00196

CONSENT JUDGMENT

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendants Woodland Construction Company, LLC and Lanny Curtis Cox, by and through counsel, consent to the entry of this Consent Judgment.

The Court has read Plaintiffs' Petition for Injunctive Relief and Civil Penalties, in which Plaintiffs allege that Defendant violated the Missouri Clean Water Law. The Court is advised that the parties have consented to the terms in this Consent Judgment for settlement purposes only, and that their consent is conditioned upon the Court approving the Consent Judgment in its entirety. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition

and that the parties want to terminate this controversy and consent to the entry of this judgment without trial. The Court retains jurisdiction over the matter in order to enforce each and every term of this Consent Judgment.

The parties, having consented to the entry of this Consent Judgment, it is hereby ORDERED, ADJUDGED AND DECREED that:

I. Objectives of the Parties

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.

II. Definitions

2. Terms used herein shall have the same meaning as provided in the Missouri Clean Water Law, Chapter 644 RSMo, and the regulations adopted thereunder. In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

b. "Defendants" means Woodland Construction Company, LLC and Lanny Curtis Cox.

c. "Department" means the Missouri Department of Natural Resources.

d. "Permit" means Missouri State Operating Permit No. MO-109DM3 issued to Defendant Woodland Construction Company, LLC.

e. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster and the Department.

f. "Site" means Woodland Hills Subdivision Phase II, generally located at Northwest Quarter, Southwest Quarter, Section 34, Township 36 North, Range 12 West, Pulaski County, Missouri.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to § 644.076.1 RSMo.¹ The subject matter of this action involves the Missouri Clean Water Law, Chapter 644 RSMo, and its implementing regulations. The Defendants' actions alleged in this petition took place in Pulaski County; therefore, venue is proper pursuant to § 644.076.1 RSMo.

IV. Parties Bound

4. The provisions of this Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the

¹ All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

parties to this action or their agents, servants, employees, heirs, successors, and assigns and Defendants shall be liable for any non-compliance of this Judgment by such persons or entities. Defendants shall provide a copy of this order to all persons or entities retained to perform work required by this order. Defendants remain liable for any non-compliance with the permit or this Consent Judgment, including any non-compliance caused by their employees, agents or contractors.

V. Satisfaction and Reservation of Rights

5. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendants are relieved of liability for the violations alleged in the petition.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition or prevent the Defendants from asserting defenses or counterclaims for any such claims.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law or regulations promulgated under its authority or prevent the Defendants from asserting defenses or counterclaims for any such claims.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' site, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise, and Defendants reserve the right to assert any defenses or counterclaims.

VI. Injunctive Relief

7. Defendants agree and are ordered to comply with the Missouri Clean Water Law, Chapter 644 RSMo, for any and all future activities in the State of Missouri.

8. Defendants agree to retain a certified professional in Erosion and Sediment Control and designate that individual as responsible for Erosion and Sediment Control at the Site until the Site is permanently stabilized pursuant to the requirements contained in MSOP No. MO-R109DM3 and any other land disturbance permit issued for the site.

9. The certified professional shall also conduct a minimum of two (2) monthly inspections of all the erosion and sediment control structures, update the SWPPP as site conditions change, and provide guidance to Defendants' employees and contractors regarding implementing, maintaining, and inspecting BMPs.

10. Defendants agree to maintain site inspection reports and a current copy of the Site's SWPPP at the Site during normal working hours and to comply with all conditions and requirements, including but not limited to maintenance and monitoring requirements contained in MSOP No. MO-R109DM3 and any other land disturbance permit issued for the site.

VII. Information Collection and Retention

11. The State, through its authorized representatives, shall have the right of entry into any facility covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Judgment;
- b. verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendants' compliance with this Consent Judgment.

12. Until five years after the termination of this Consent Judgment, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Judgment. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures.

At any time during this information-retention period, upon request by the State, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

13. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the State at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the State, Defendants shall deliver any such documents, records, or other information to the State. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Judgment shall be withheld on grounds of privilege.

14. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

VIII. Civil Penalty

15. Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty of \$15,691.00.

IX. Stipulated Penalties

16. In the event that Defendants fail to comply with the requirements set forth in this Consent Judgment, Defendants shall be liable for stipulated penalties in accordance with the following schedule. Defendants retain the right to challenge any alleged violations but not the stipulated penalty amount.

A. \$200.00 per day for each day of each violation up to thirty days.

B. \$300.00 per day for each day of each violation, from thirty-one days to sixty days.

C. \$400.00 per day for each day of each violation, beyond sixty days.

17. Unless timely challenged, stipulated penalties shall be due and payable within ten days of demand being made by the Attorney General's Office. Defendants shall pay stipulated penalties by check made payable to the "*State of Missouri (Pulaski County)*" and mailed, along with a copy of the State's stipulated penalty demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check will be deposited and processed in accordance with the consent judgment and Missouri law.

18. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

X. Response Cost Recovery and Natural Resource Damages

19. Defendants agree to reimburse the Department for its investigative and response costs and expenses incurred in this matter as a result of the events described in the Petition, in the amount of \$1,409.00.

20. Defendants agree to pay Natural Resource Damages to the State in the amount of \$12,900.00 for the damages to the ground water, surface

water, and other natural resources of the State resulting from the events described in the Petition.

XI. Payment Schedule

21. Defendants agree to pay the civil penalty, investigative and response costs, and natural resource damages in accordance with the following schedule. Defendants will mail the check(s) and a copy of the Consent Judgment to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

The first payment in the amount of \$5,000 shall be made within 30 days of entry of this Consent Judgment with a check of \$1,409 made payable to the "*State of Missouri*" and a check of \$3,591 made payable to the "*State of Missouri (Natural Resource Damages Subaccount No. 0555)*".

The second payment in the amount of \$5,000 shall be made within six months of entry of this Consent Judgment with a check of \$5,000 made payable made payable to the "*State of Missouri (Natural Resource Damages Subaccount No. 0555)*".

The third payment in the amount of \$10,000 shall be made within one year of entry of this Consent Judgment with a check of \$4,309 made payable to the "*State of Missouri (Natural Resource Damages Subaccount No. 0555)*" and a check of \$5,691 made payable to "*State of Missouri (Pulaski County)*".

The fourth payment in the amount of \$10,000 shall be made within two years of entry of this Consent Judgment with a check of \$10,000 made payable "*State of Missouri (Pulaski County)*".

If Defendants fail to make any payment within five calendar days of the due date, it shall become immediately liable for payment of the entire unpaid amount, including the suspended penalty.

XII. Modification

22. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among the parties, their successors and assigns and with the approval of the Court. All modifications shall be in writing and filed with the Court.

XIII. Costs

23. Defendants shall pay all court costs in this action.

[Remainder of page intentionally left blank.]

The parties hereby consent to this Consent Judgment through their
duly authorized representatives as indicated below.

WOODLAND CONSTRUCTION CO., LLC

By: Lanny Curtis Cox
Lanny Curtis Cox, Manager

Date: Dec 4 2014

LANNY CURTIS COX

Name: Lanny Curtis Cox
Date: Dec 4 2014

MISSOURI ATTORNEY GENERAL'S OFFICE

By: 12-16-14
Daren R. Eppley
Deputy Chief Counsel

Date: [Signature]

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: [Signature]
Leanne Tippett Mosby, Director
Division of Environmental Quality

Date: 12/19/14

SO ORDERED.

STATE OF MISSOURI }
COUNTY OF PULASKI } ss.

I, Rachelle Beasley, Circuit Clerk and ex-officio Recorder, Pulaski
County, Missouri, hereby certify the above to be a true copy of

Judgment
as the same appears of record (on file) in said court.

WITNESS my hand and the seal of said Court at office in
Waynesville, Mo., this 1/23/2015

RACHELLE BEASLEY

By: Rachelle Beasley 13
Circuit Clerk & ex-officio Recorder
Pulaski County

[Signature]
Circuit Judge John D. Beatty

Date: [Signature]