

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Freeman Hills Wastewater)
 Treatment Facility)
)
) **Order No. 2016-WPCB-1432**
)
)
 Proceeding under the)
 Missouri Clean Water Law)

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

SERVE BY UNITED POSTAL SERVICE NEXT DAY AIR

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RETURN RECEIPT REQUESTED

TO: Freeman Hill Subdivision Assoc
C/O Mr. Randy Haerer
19878 Audrain Road 375
Mexico, MO 65265

NOTICE IS HEREBY GIVEN that on this date the Department of Natural Resources has issued this Notice and Order to Abate Violations and Pay Administrative Penalties (Order) to Freeman Hills Subdivision Assoc, under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically Sections 644.056 and 644.079 RSMo. The Freeman Hills Subdivision Association, may be collectively referred to as the Respondent for purposes of this order.

Failure to comply with this order is, by itself, a violation of the MCWL under Section 644.076 RSMo. Continued non-compliance may result in the department pursuing legal action for injunctive relief, penalties of up to \$10,000 per day for each day or part thereof of

noncompliance, a surcharge of 15 percent of the penalty described herein, 10 percent 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. The Respondent is a nonprofit corporation registered in and in good standing with the Missouri Secretary of State that owns a wastewater treatment facility (WWTF) that serves the Freeman Hills Subdivision, near Mexico, Missouri. Wastewater generated by approximately 16 single-family homes in the subdivision is treated by a three-cell lagoon, with sludge retained in the lagoon located in the SE ¼, NE ¼, Section 17, Township 51 North, Range 9 West of Audrain County, Missouri. Effluent from the WWTF discharges from Outfall No. 001 into a tributary to Brushy Branch pursuant to the requirements and conditions of Missouri State Operating Permit (MSOP) No. MO-0033901. The MSOP, which became effective on September 16, 2011 and was modified on September 23, 2011, will expire under its own terms on September 15, 2016.

2. On September 16, 2011, the department issued MSOP No. MO-0033901 to the Respondent which contained a Schedule of Compliance (SOC) requiring the Respondent to take appropriate actions to achieve compliance with the final permitted effluent limitations for Ammonia as Nitrogen (Ammonia as N) by September 16, 2014. MSOP No. MO-0033907 required the effluent to comply with a monthly average of 1.4 milligrams per liter (mg/L) between May 1 and October 31 and 2.9 mg/L between November 1 and April 30 for Ammonia as N.

3. MSOP No. MO-0033901 requires the Respondent to sample the effluent discharged from Outfall No. 001 and chemically analyze the effluent sample for the water contaminants listed in Part "A" every quarter. MSOP No. MO-0033901 further requires the

effluent to comply with the effluent limitations contained in Part “A” and requires the results of the analysis to be submitted to the department on quarterly Discharge Monitoring Reports (DMRs).

4. The September 16, 2011 MOSP No. MO-0033901 required the Respondent to analyze the effluent for Ammonia as N and submit the results to the department on its quarterly DMRs. Quarterly DMRs submitted to the department before September 16, 2014 reported that the effluent would not have complied with final permitted effluent limitations for Ammonia as N during the first and fourth quarters of 2013. DMRs submitted to the department report a value of 2.8 mg/L during the first quarter 2013 and 19.8 mg/L during the fourth quarter 2013.

5. Quarterly DMRs submitted to the department document that the effluent discharged from the lagoon failed to comply with applicable permitted effluent limitations for Ammonia as N during the third quarter of 2014, and the second and third quarter of 2015. DMRs submitted to the department report a value of 2.8 mg/L during the third quarter 2014, 2.2 mg/L during the third quarter 2015 and 4.5 mg/L during the fourth quarter 2015.

6. The Respondent failed to report flow values on quarterly DMRs submitted to the department for the first, second and fourth quarters of 2015, as required by MSOP No. MO-0033901.

7. On September 17, 2014, department staff conducted a routine inspection of the lagoon. During the inspection, staff observed a large amount of duckweed directly below the lagoon’s outfall, which could deplete oxygen in the tributary as it decays. Staff observed a stormwater berm on the northeast corner of the lagoon that was insufficient to prevent stormwater from entering the lagoon. As part of the inspection, staff conducted a file review of the MSOP. During this review, staff discovered that the department had not received

engineering plans, specifications or a construction permit application as required by the SOC for Ammonia in the MSOP.

8. On October 16, 2014, the department issued Notice of Violation (NOV) No. NER2014101013374902 to the Respondent for violations observed during the September 17, 2014, inspection. The inspection report that accompanied the NOV required the Respondent to take corrective actions to resolve the violations by November 6, 2014.

9. As of the date of this Order, the department has not received engineering plans, specifications or a construction permit application, or completed upgrades to enable the effluent to comply with the final limitations for Ammonia by September 16, 2014, as required by the SOC in the MSOP.

10. The administrative penalty described below is assessed according to 10 CSR 20-3.010. The violations referenced herein had at least a moderate potential for harm based on the potential risk to human health, safety, and the environment, and were at least a moderate deviation from the MCWL and its implementing regulations. Using the gravity-based matrix, the base penalty falls within a range of \$1,501 to \$2,500. Since the department documented three violations of the MCWL, an administrative penalty in the amount of \$8,000 is justified.

11. This Order is necessary to compel compliance and to prevent, or eliminate threats to human health and the environment.

STATEMENT OF VIOLATIONS

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

12. Failed to complete upgrades to the WWTF to comply with final effluent limitations for Ammonia as required in Part "D" of MSOP No. MO-0033901, in violation of Section 644.076.1, RSMo, 10 CSR 20-6.010(7)(A) and 10 CSR 20-6.010(7)(C).

13. Placed or caused or permitted to be placed, a water contaminant, domestic wastewater, 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.

14. Failed to comply with the effluent limitations contained in Part "A" of MSOP No. MO-0033901, in violation of Sections 644.051.1(3) and 644.076.1, RSMo

15. Failed to submit complete DMRS as required in Part "A" of MSOP MO-0033901 in violation of Section 644.706.1, RSMo, and 10 CSR 20-7.015(9)(D)1.

CORRECTIVE ACTIONS

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

16. Respondent is ordered to operate and maintain the existing WWTF at all times in compliance with the conditions and requirements of MSOP No. MO-0033901. All units or components of the existing WWTF shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the WWTF.

17. Within 30 days of the effective date of this Order, the Respondent is ordered to install a vertical t-joint on the influent end of the outfall pipe to prevent duckweed from discharging from lagoon.

18. Within 90 days the effective date of this Order, the Respondent is ordered to submit a report to the department prepared and sealed by a professional engineer licensed to practice in the State of Missouri. The report shall evaluate the lagoon and recommend upgrades or replacement of the lagoon that will result in compliance with all applicable effluent limitations contained in MSOP No. MO-0033901. The engineering report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8.

19. Within 30 days of receipt of department comments on the engineering report, the Respondent is ordered to submit a response to the department in writing addressing all department comments on the engineering report to the department's satisfaction.

20. Within 60 days from the date the department approves the engineering report the Respondent is 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 by the engineering report. The plans and specifications shall be developed in accordance with 10 CSR 20-8.

21. Within 30 days of receipt of department comments on the application for construction permit, plans and/or specifications, the Respondent is ordered to respond to the department in writing addressing all department comments on the construction permit application to the department's satisfaction.

22. Within 180 days of the date the department issues a construction permit for the improvements, the Respondent is ordered to complete construction pursuant to the plans and specifications and achieve compliance with all applicable permitted effluent limitations.

23. Within 15 days of completion of construction activities, the Respondent is ordered to submit to the department a completed Statement of Work Completed form MO 780-2155 (12-11) including all required supplemental information, appropriate forms and fees and, if applicable, a complete application for the reissued MSOP, including applicable fee.

24. If the recommended alternative is connection to an area-wide wastewater treatment and collection system, the Respondent is ordered to complete construction of a sewer extension and divert the flow from Freeman Hills Subdivision to an area-wide wastewater

collection and treatment section 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 Respondent is 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 Respondent is 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 Respondent agrees and is 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 at least 30 days prior to beginning construction of the sewer connection.

25. If the existing lagoon is to be abandoned, the Respondent is ordered to submit to the department for review and approval a closure plan, including a Facility Closure Request Form, developed in accordance with Standard Conditions, Part III, Section H within 180 days of the date the department approves the engineering report required in Paragraph 17 of this Order. If the existing lagoon will be incorporated into the new department-approved WWTF, a closure plan will not be required.

26. Within 15 days of receipt of department comments on the closure plan, the Respondent is ordered to respond in writing to the department addressing all department comments on the closure plan to the department's satisfaction.

27. If applicable, within 120 days of diverting the wastewater flow from the lagoon 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 lagoon closure plan, the Respondent is ordered to: 1) complete closure of the lagoon 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 lagoon was closed pursuant to the closure plan approved by the department. In the event the Freeman Hills Subdivision is connected to an area-wide wastewater collection and treatment system, the Respondent is ordered to submit to the department an application to terminate MSOP No. MO-0033901 at the time the lagoon has been closed in accordance with the department-approved closure plan and the site is stabilized, as required in paragraph 26 above.

PENALTY

Pursuant to Section 644.079 RSMo and 10 CSR 20-3.010, the department hereby orders Respondent to pay administrative penalties for the above-referenced violations as follows:

28. Respondent shall pay to the department an administrative penalty in the amount of \$8,000. Within 60 days from the date of issuance of this Order, the Respondent shall submit a check in the amount of \$8,000 as described below.

29. Such payment shall be made by certified check or cashiers check made payable to: Audrain County Collector as Treasurer of the Audrain County School Fund.

30. Such payment must be delivered to the Department of Natural Resources, Accounting Program, P.O. Box 477, Jefferson City, Missouri 65102, for forwarding to the Audrain County Treasurer.

SUBMISSIONS

31. All other documentation submitted to the department for compliance with this order shall be submitted within the timeframes specified to:

Ms. Joan Doerhoff
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

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

33. 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. 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.

34. This Order shall apply to and be binding upon the Respondent and any of their agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for 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 respondents of their obligation to comply with this Order.

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

NOTICE OF APPEAL RIGHTS

36. Anyone adversely affected by this decision may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to Sections 644.056, 644.079, 640.013, 621.250, RSMo, and 10 CSR 20-1.020. Appeal may be taken by the filing of 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

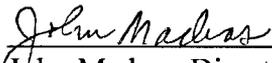
AHC. Any appeal should be directed to:

Administrative Hearing Commission
P.O. Box 1557
Jefferson City, Missouri 65102-1557
phone: 573-751-2422
fax: 573-751-5018
website: www.oa.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 12th day of September, 2016 by:

DEPARTMENT OF NATURAL RESOURCES



John Madras, Director
Water Protection Program

- c: Ms. Irene Crawford, Director, Northeast Regional Office
Ms. Diane Huffman, Environmental Protection Agency
Mr. Tim Duggan, Missouri Attorney General's Office
Missouri Clean Water Commission
Accounting Program