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Water Protection Program

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

**IN THE MATTER OF:**

**Nicholas E. Schierhoff  
Mapa Acres MHP  
~~3746 Lichner Rd~~  
Hillsboro, MO 63050**

**No. 2016-WPCB-1403**

**SERVE:**

**Mr. Nicholas E. Schierhoff**

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**ABATEMENT ORDER ON CONSENT**

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**NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuing of this Abatement Order on Consent (AOC) No. 2016-WPCB-1403, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because Nicholas E. Schierhoff (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 the Mapa Acres Mobile Home Park located in SW ¼, NE ¼, Section 21, Township 41 North, Range 5 East, in Jefferson County Missouri. Approximately 20 mobile homes are served by a wastewater treatment facility (WWTF) consisting of a three-cell lagoon with sludge stored in lagoon. Design population equivalent is 148, design flow is 12,600 gallons per day (gpd), adjusted design flow of less than 5,000 gpd, and a reported actual flow of 0.0 gpd. Effluent from the WWTF discharges to an unclassified tributary to Sandy Creek, pursuant to the requirements and conditions of Missouri State Operating Permit (MSOP) No. MO-0056448. The tributary to Sandy Creek was reclassified on August 20, 2013, to a Class C receiving stream with WBC B, with the beneficial uses of irrigation, Livestock and Wildlife watering, Protection of Warm Water Aquatic Life, Human Health-Fish Consumption, Secondary Contact Recreation.

2. Sandy Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.

3. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.

4. The MSOP was originally issued to Mr. James Schierhoff on January 5, 2007, and was transferred to the Respondent on April 24, 2009. The MSOP included a Schedule of Compliance (SOC) requiring the permit holder complete the following:

- a. By July 1, 2007, submit an application and plans to construct an effluent measuring structure to utilize an automatic continuously recording device or submit a barrel study of the existing lagoon to show that the lagoon is not leaking.

- b. By January 1, 2009, complete construction of effluent measuring structure.
- c. By January 3, 2012, install disinfection, present an evaluation to show that disinfection is not required or; present a Use Attainability Analysis that demonstrates one or both recreational uses are not attainable in the classified waters receiving the effluent.

5. The MSOP was reissued to the Respondent on July 1, 2013, and will expire by its own terms on December 31, 2016. The MSOP 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" once per quarter. The MSOP also requires the effluent to comply with the limitations contained in Part "A" and requires the results of the analysis to be submitted to the department on quarterly Discharge Monitoring Reports by the 28<sup>th</sup> day of the month following the reporting period.

6. On November 15, 2013, department staff conducted a routine compliance inspection of the WWTF and found that the items required by the SOC contained in MSOP issued on January 5, 2010 had not been completed.

7. On December 9, 2013, the department issued the Respondent a Notice of Violation (NOV) for found during the November 15, 2013, inspection. The NOV required the Respondent to submit a written statement to the St. Louis Regional Office within 15 days of receipt explaining the steps the Respondent will take to complete the requirements of the SOC.

8. On May 1, 2015, the department received a Preliminary Engineering Report (PER) from Rhutasel and Associates, Inc (RAI) on behalf of the Respondent for the installation of a land application system. The PER included a basis of design, soil evaluation report,

geohydrologic evaluation, plan drawing of the existing WWTF, an aerial photo of the WWTF with the proposed system, and a data sheet on the proposed spray nozzle for land application.

9. On October 23, 2015, the department received an engineering report and construction permit application from RAI on the behalf of the Respondent. The construction permit application submitted to the department is for the construction of a no-discharge land application irrigation system.

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

### **STATEMENT OF VIOLATIONS**

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

11. Failed to upgrade WWTFs as required in Part "B", Standard Conditions, and Part "C", SOC, of MSOP No. MO-0056448, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A).

### **AGREEMENT**

12. The department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent for violations alleged above in Section III, Citations and Conclusions of Law, without the Respondent admitting to the validity or accuracy of such claims.

13. 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 Respondent under this AOC.

14. The Respondent, in compromise and satisfaction of the department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of \$4,000.00. The department and Respondent further agrees that \$4,000.00 of the civil penalty shall be suspended for a period of two years on the condition that the Respondent does not violate the MCWL and its implementing regulations or the terms of this AOC.

15. Upon determination that the Respondent has failed to meet the terms of this AOC, including the SOC set out in Paragraphs 18 through 21, the department shall send a written demand for the suspended penalty in the amount of \$4,000.00 to the Respondent. The Respondent shall have 15 days from its receipt of the written demand to submit the suspended penalty in the form of a certified check or cashier's check made payable to "Jefferson County Treasurer, as custodian of the Jefferson County School Fund." The check shall be delivered to:

Accounting Program  
Department of Natural Resources  
P.O. Box 477  
Jefferson City, MO 65102-0477

16. In the period of time from the effective date of this AOC until the new or upgraded WWTF is completed, the Respondent shall operate and maintain the existing WWTF at all times in compliance with the conditions and requirements of MSOP No. MO-0056448. 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.

18. Within 30 days of receipt of department comments on the Respondent's construction permit application, the Respondent shall respond to and adequately address, to the

department's satisfaction, all of the department's comments on the construction permit application.

19. Within 180 days of the date the department issues the Respondent a construction permit, the Respondent agrees and is ordered to complete construction of the improvements as approved by the department.

20. Within 60 days of completing construction, the Respondent shall submit to the department a Statement of Work Complete Form, signed, sealed and dated by a professional engineer registered in the state of Missouri certifying that the project is complete and operable in accordance with department approved plans and specifications, and a complete application with the applicable fee to modify the MSOP.

21. Within 60 days of completing construction of the improvements, the Respondent agrees and is ordered to achieve compliance with the final effluent limitations contained in Part "A" of the MSOP.

#### **SUBMISSIONS**

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

Mr. Kurtis Cooper  
Department of Natural Resources  
Water Protection Program  
Compliance and Enforcement Section  
P.O. Box 176  
Jefferson City, Missouri 65102-0176

#### **OTHER PROVISIONS**

23. 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 basic provisions of i, ii, and iii listed 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 Respondent's right to request an extension and may be grounds for the department to deny the Respondent an extension.

24. Should the Respondent fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs 18 through 21, 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

25. Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Jefferson County Treasurer, as custodian of the Jefferson 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 65102-0477

26. 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.

27. 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 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.

28. 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.

29. 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 its records.

30. The Respondent shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

#### **NOTICE OF APPEAL RIGHTS**

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.

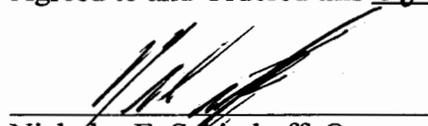
**SIGNATORY AUTHORITY**

Agreed to and Ordered this 25<sup>th</sup> day of February, 2016



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

Agreed to and Ordered this 22<sup>nd</sup> day of February, 2016

  
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Nicholas E. Schierhoff, Owner  
Mapa Acres Mobile Home Park

Copies of the foregoing served by certified mail to:

Mr. Nicholas E. Schierhoff    CERTIFIED MAIL # 7012 2920 0002 0660 5767  
Mapa Acres Mobile Home Park  
3630 Schierhoff Drive  
Hillsboro, MO 63050

c:    Ms. Diane Huffman, Environmental Protection Agency  
      Mr. Chris Wieberg, Chief, Operating Permits Section  
      Ms. Dorothy Franklin, Director, St. Louis Regional Office  
      Missouri Clean Water Commission