

FINDINGS OF FACT

1. The Respondent has developed a 20.83 acre residential subdivision planned for 13 lots located in Laquey, Missouri. The legal description for the property is the SW ¼, of the SW¼, Section 7, Township 35 North, Range 12 West, in Pulaski County.

2. Pursuant to 10 CSR 20-6.030 (1)(D), the developer of any residential housing development shall obtain approval from the department for the method of sewage treatment and disposal to be used in the development prior to the sale or lease of any lot, or the commencement of construction on any lot by the developer or any person. To obtain approval, the developer must submit to the department office, a copy of the Geohydrologic Evaluation, the Soils Report, and Plat Map as described in this rule. The Geohydrologic Evaluation is described in 10 CSR 20-6.030(2), the Soils Report is described in 10 CSR 20-6.030(3), and the Plat Map is described in 10 CSR 20-6.030 (4).

3. On February 2, 2012, the department received a preliminary plat, dated June 2008, for the Sunshine Hills Subdivision, which covered 20.83 acres. The plat indicated that the residential housing development was planned with 13 lots all less than five acres in size.

4. On February 14, 2012, the department sent correspondence informing the Respondent that because the subdivision has greater than seven lots, less than five acres, the developer is required to obtain written approval from the department for the method of wastewater treatment prior to the sale, lease, or the commencement of construction by the developer, pursuant to 10 CSR 20-6.030. In this correspondence, the department requested that the Respondent refrain from selling or leasing of any further lots until the development is brought into compliance with the MCWL and its implementing regulations.

5. On April 1, 2013, the department's Division of Geology and Land Survey conducted a Geohydrologic Evaluation of the subdivision as requested by the Respondent and provided a minimum acreage per lot of 3.6 acres.

6. On April 18, 2013, the department received the following documents from the respondent: i) a Soils Report dated December 27, 2012, developed by Duane Viele; ii) the Residential Housing Development Geohydrologic Groundwater Evaluation Rating report for the evaluation conducted on April 1, 2013; and iii) an updated plat map which showed all 13 lots were less than five acres in size, as shown in Table 1 below. The plat map also indicated seven lots had been sold and that individual subsurface soil absorption systems had been installed, as indicated in the table below.

Table 1

Lot	Acreage	Sold	Developed
1	3.10	NO	NO
2	1.58	NO	NO
3	1.30	NO	NO
4	1.24	YES	YES
5	2.10	YES	YES
6	1.41	NO	NO
7	2.14	YES	YES
8	1.29	YES	YES
9	1.00	YES	NO
10	1.29	YES	YES
11	1.50	YES	YES
12	1.19	YES	YES
13	1.60	NO	NO

7. On or about May 23, 2013, the department reviewed the revised plat map, Soils Report, and Geohydrologic Evaluation for the subdivision and concluded that following the criteria set forth in 10 CSR 60.30 for the residential housing development, the minimum lot size appropriate to utilize individual onsite wastewater treatment systems on any individual lots

within the Sunshine Hills Subdivision shall be 3.6 acres. According to the plat submitted to the department, lot numbers 1, 2, 3, 6, and 13 were under the respondent's control.

8. On June 25, 2013, department staff conducted an inspection of the subdivision. During this inspection, staff met with Respondent and observed that seven homes had been built within the subdivision on lot numbers 4, 5, 7, 8, 10, 11, and 12. Staff also documented that lot numbers 9 had been sold to the owners of lot number 8 and 10, and that a lot sold in the 2008 timeframe had been sold to a new owner.

9. Based upon the violations documented by department staff during the June 25, 2013, inspection, the department issued Notice of Violation (NOV) No. 19277SE to Respondent on July 1, 2013, for failure to obtain approval from the department for the method of sewage treatment prior to the sale or lease of any lot or the commencement of construction.

10. Since at least February 14, 2012, the department has met with Respondent and sent correspondence to the Respondent explaining the requirements of the MCWL, the violations documented by the department, and the steps necessary to correct the violations and achieve compliance with the MCWL and its implementing regulations.

11. On January 8, 2015, the department issued a Notice and Order to Abate Violations to Respondent ordering him to cease and desist selling, leasing, and/or constructing on any remaining lots in the subdivision under respondent's control until the Respondent receives written approval from the department for the method of sewage disposal pursuant to 10 CSR 20-6.030 or a Missouri State Operating Permit (MSOP) issued by the department for a wastewater collection and treatment system to treat wastewater generated by the homes in the subdivision.

12. According to the Pulaski County Recorder's records, the Respondent has sold nine lots since August 24, 2010, with the latest lot being sold on January 28, 2015. Department records indicate that none of these lots had received approval for the method of wastewater treatment and at least seven of these have individual subsurface soil absorption systems installed.

13. 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:

14. Failed to obtain approval from the department for the method of sewage treatment and disposal in the Sunshine Hills Subdivision prior to the sale or lease of any lot, or the commencement of construction on any lot by the developer or any person, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.030(1)(D).

AGREEMENT

15. 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 without Respondent admitting to the validity or accuracy of such claims.

16. 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.

17. 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 \$30,000.00. The department and the Respondent further agree that \$25,000.00 shall be suspended as described in Paragraph 18 below. The payment of the civil penalty in the amount of \$5,000.00 shall be in the form of a check made payable to the "Pulaski County Treasurer, as custodian of the Pulaski County School Fund" and is due and payable upon execution of this AOC by the respondent. The check and signed copies of the AOC shall be delivered to:

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

18. The suspended penalty described in Paragraph 17 in the amount of \$25,000.00 shall be suspended for a period of five years from the execution of this AOC upon the condition that the Respondent does not violate the terms of the AOC or the MCWL. Upon determination that the Respondent has failed to meet the terms of this AOC, the department shall send a written demand for the suspended penalty to the respondent. The Respondent shall have 15 days from receipt of written demand to submit the suspended penalty to the address listed in Paragraph 17. The suspended penalty will be in addition to any penalty.

19. The Respondent agrees and is ordered to cease and desist selling, leasing, and/or constructing on any remaining lots in the subdivision under his control until an MSOP issued by the department for a wastewater collection and treatment system to treat wastewater generated by the homes in the subdivision. If an MSOP is not obtained for a wastewater treatment and collection system to serve the subdivision, then the only acceptable sale would be the selling of vacant lots to adjacent lot owners and only for additional acreage, as the sold lot may not be used

for any additional structures or residences of any kind and must be incorporated into the adjacent lot, used in perpetuity as such, and recorded with the Pulaski County Recorder's Office limiting the use of the lot.

SUBMISSIONS

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

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

OTHER PROVISIONS

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 7th day of July, 2016

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

Agreed to and Ordered this 21 day of 6, 2016


John Boevingloh

Copies of the foregoing served by certified mail to:

Mr. Joe Boevingloh
24800 Highway P
Laquey, MO 65534

CERTIFIED MAIL # 7012 2920 0002 0662 9497

c: Ms. Diane Huffman, Environmental Protection Agency
Mr. Jackson Bostic, Director, Southeast Regional Office
Mr. Tim Duggan, Attorney General's Office
Missouri Clean Water Commission
Accounting Program