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Water Protection Program

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)	
)	
The Gates Plat No. 1)	
)	Order No. 2016-WPCB-1410
Serve:)	
)	
The Gates Real Estate, LLC)	

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2016-WPCB-1410, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because The Gates Real Estate, LLC is in violation of 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 Gates Real Estate, LLC 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 Gates Real Estate, LLC (company) owns and is disturbing a subdivision site, known as the The Gates Plat No. 1. Mr. Michael D. Thompkins is the registered agent for the company. The subdivision is 22.54 acres in size (approx. 17 acres disturbed), located at Section 9, Township 47 North, Range 13 West in Boone County, Missouri. The site is planned for approximately 28 single-family homes. The site operates pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) No. MO-RA04710. The receiving stream for stormwater runoff from the site is a classified tributary to Bonne Femme Creek.

2. Requirements of an MSOP for land disturbance include, but are not limited to, the development of a Stormwater Pollution Prevention Plan (SWPPP) and the implementation of appropriate Best Management Practices (BMPs) throughout the site.

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

4. Sediment is a water contaminant as the term is defined in Section 644.016(24), RSMo.

5. On August 7, 2014, department staff conducted a routine compliance inspection of the site in response to the report of an environmental concern at the site (ACE No. 19757). Company staff, Branch Manager and Site Superintendent of Emery Sapp and Sons, were present for the inspection. During the inspection, staff observed sediment-laden water overflowing a sediment basin flowing onto Old Plank Road without encountering additional BMPs, sediment-laden water discharging into a tributary of Little Bonne Femme Creek, erosion gullies and seven failed rock check dams. Staff also documented that the site's SWPPP had not been updated to reflect the current conditions of the site.

6. On August 13, 2014, department staff conducted a follow-up inspection at the site. Staff inspectors for the city of Columbia were also present for the inspection. During the inspection, department staff observed that the SWPPP had been updated and that many of the rock check dams and other BMPs had been repaired. Department staff also observed the following conditions: 1) no BMPs were implemented between a portion of the disturbed area and a tributary of Little Bonne Creek; 2) a silt fence that had been filled with sediment; 3) sediment deposits 5 inches deep on the side of Old Plank Road; 4) sediment deposits 0.5 inches deep in the tributary; and 5) two failed rock check dams. Staff noted that algae covered some of the sediment deposits. Department staff also noted that three weekly site inspections, corresponding to the weeks June 23 – July 1, 2014, July 14 – July 25, 2014 and August 7 – August 15, 2014, were not available at the site.

7. Available site inspection reports produced by company staff from June 16, 2014 to August 25, 2014, document that rock check dams at the site were cleaned and repaired once, June 23, 2014, in response to a 2.5 inches storm event, between June 16, 2014 and August 7, 2014. Between June 23, 2014 and August 7, 2014, two significant storm events were documented by the site inspection reports on July 8, 2014 and July 14, 2014, during which 2.5 inches of rainfall were recorded, respectively. The site inspection reports also document two inches of rainfall at the site from August 7 – August 9, 2014, which was the proximate cause of the failed BMPs observed during the August 7 and August 14 inspections.

8. On August 15, 2014, the department received an electronic correspondence from company staff with attached pictures of BMPs, such as rock check dams and straw applied over exposed ground, that were emplaced at the site after the August 14, 2014, inspection.

9. Based upon the violations observed during the August 7 and August 13, 2014, inspections, the department issued Notice of Violation (NOV) No. NER2014082511354170 to the company on September 3, 2014. The attached inspection report required the company to submit a written report to the department outlining the actions taken to correct the deficiencies noted in the inspection report and prevent a recurrence of the violations by September 24, 2014. The inspection report also required the company to provide additional documentation upon request of the Compliance and Enforcement Section of the Water Protection Program. Furthermore, the NOV provided an opportunity for the company's representatives to meet with department staff.

10. On September 22, 2015, the department received letter from Mr. Tim Crockett, of Crockett Engineering Consultants, L.L.C., and a check from the company, made payable to "Department of Natural Resources," in the amount of \$10,000.00 for payment of a civil penalty to resolve the past violations of the MCWL and its implementing regulations.

11. On September 26, 2014, the department received correspondence from Mr. Crockett, which addressed the unsatisfactory features noted in the September 3, 2014, inspection report. The letter stated that existing BMPs at the site were either repaired or enlarged, and an additional silt fence and rock check dams were added at the site. The letter provided recommendations on how to prevent sediment from leaving the site in future.

12. On September 28, 2015, the department returned the civil penalty payment check to the company with a letter explaining that the civil penalty payment check must be made payable to the school fund of the county in which the violation occurs. The letter also explained that the civil penalty payment must be submitted in part with a signed AOC which would be prepared by the department and submitted for the company's review.

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 company have violated the MCWL and its implementing regulations as follows:

14. Discharged water contaminants into waters of the state, a classified tributary of Bonne Femme Creek, which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031, or applicable subsection of 10 CSR 20-7.031.

15. Caused pollution of waters of the state, a classified tributary of Bonne Femme Creek, or placed or caused or permitted to be placed a water contaminant 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.

16. Failed to implement and maintain adequate BMPs to prevent sediment in stormwater discharges as required by Paragraph 2 of the Requirements of MSOP No. MO-RA04710, in violation of Section 644.076.1, RSMo and 10 CSR 20-6.200.

17. Failed to conduct weekly site inspections as required by Paragraph 10 of the Requirements of MSOP No. MO-RA04710, in violation of 644.076.1, RSMo.

AGREEMENT

18. The department and the company desire to amicably resolve all claims that may be brought against the company for violations alleged above in Statement of Violations.

19. 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 company under this AOC.

20. The company, 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 \$10,000.00. The parties further agree that \$10,000.00 shall be paid upfront. The payment in the amount of \$10,000.00 shall be in the form of a check made payable to the "Boone County Treasurer, as custodian of the Boone County School Fund" and is due and payable upon execution of this AOC by the company. The check and the signed copy of this AOC shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

21. The company agrees and is ordered to immediately complete the following:
i) implement and maintain BMPs throughout the site; ii) implement the SWPPP for The Gates Plat No. 1 development; and iii) maintain the site within the requirements and conditions of MSOP No. MO-RA04710 until the MSOP is terminated to prevent sediment from discharging off-site or into waters of the state.

22. The company agrees and is ordered to conduct regularly scheduled inspections of all the erosion and sediment control structures at least once per seven days, or within 48 hours after a rain event has ceased, or within 72 hours if the rain event ceases during a non-work day such as a weekend or holiday, as stated by Requirement Number 10 in the MSOP, until MSOP

No. MO-RA04710 is terminated.

23. The company agrees and is ordered to maintain inspection reports and a current copy of the 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-RA04710 until MSOP No. MO-RA04710 is terminated.

24. Within 30 days of the effective date of this AOC, the company agrees and is ordered to submit to the department, for review and approval, a report, with color photographs, detailing improvements made to The Gates Plat No. 1 development site and evidence of proper BMP installation and maintenance. This report shall also include inspections conducted by the company, as referenced in Paragraph 23 from above. The company also agrees and is ordered to submit to the department, copies of inspection reports required by Paragraph 10 of MSOP No. MORA04710 by the 10th day of following each month for the 12 months following the effective date of this AOC or until the permit is terminated by the department.

25. The company agrees and is ordered to comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

SUBMISSIONS

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

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

OTHER PROVISIONS

27. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the company 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 company shall submit to the department for review and approval a written request containing the same information. 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 company’s right to request an extension and may be grounds for the department to deny the extension.

28. Should the company fail to meet the terms of this AOC, including the deadlines set out in Paragraphs 23 and 25 above, the company 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

Stipulated penalties will be paid in the form of a certified or cashier’s check made payable to “Boone County Treasurer, as custodian of the Boone 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

29. 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.

30. Nothing in this AOC forgives the company 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.

31. 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.

32. 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 company for its records.

NOTICE OF APPEAL RIGHTS

33. By signing this AOC, the company 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.

SIGNATURE AUTHORITY

Agreed to and Ordered this 29th day of June, 2016



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

Agreed to and Ordered this 1st day of JUNE, 2016



Mr. Michael D. Thompkins
The Gates Real Estate, LLC

Copies of the foregoing served by certified mail to:

Mr. Michael D. Thompkins
c/o The Gates Real Estate, LLC
6000 South Highway KK
Columbia, MO 65203

CERTIFIED MAIL # 7012 2920 0002 0662 9855

- c: Ms. Irene Crawford, Director, Northeast Regional Office
- Ms. Diane Huffman, Environmental Protection Agency
- Missouri Clean Water Commission
- Accounting Program