

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Frontline Development, LLC)
 TRC-Emerald Point Sanitary) **Order No. 2017-WPCB-1402**
 Sewer Trunkline)
)
)
 Proceeding under the)
 Missouri Clean Water Law)

ABATEMENT ORDER ON CONSENT

SERVE BY CERTIFIED MAIL # 7016 0600 0000 2592 8192
RETURN RECEIPT REQUESTED

TO: Mr. Brandon Sifers
4435 Main Street, Ste. 1100
Kansas City, MO 64111

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2017-WPCB-1402, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because Frontline Development, LLC (Respondent) violated the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 644.056 and 644.079, Revised Statutes of Missouri (RSMo). Failure to comply with this AOC is, by itself, a violation of Section 644.076.1, RSMo. Litigation may occur without further 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 is a Limited Liability Company that is active and registered with the Missouri Secretary of State.

2. As part of its business the Respondent conducted clearing, grubbing, excavating, grading and other activities that resulted in the destruction of the root zone of approximately four acres on a tract of land located in Section 25, Township 22 North, Range 22 West, situated east of the east right-of-way line of Missouri State Highway 265 in Taney County, Missouri. The project is known as the TRC-Emerald Pointe Sanitary Sewer Trunk Line. Stormwater discharges from the site to a tributary to Short Creek.

3. Short 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 September 29, 2014, Department staff conducted an investigation in response to an environmental concern regarding the construction activities occurring at the site.

Department staff observed that a sewer line was being installed along and in a tributary to Short Creek. The project was 2,900 feet long and 50 feet wide for a total disturbed area of 3.3 acres.

Department staff also found that Best Management Practices (BMPs) had not been installed to prevent sediment from eroding offsite and into waters of the state, an earthen dam had been installed in the tributary to Short Creek and sediment deposits were observed in the tributary to

Short Creek. Department staff also found that the Respondent did not have a land disturbance permit or construction permit for the sewer extension.

6. On October 31, 2014, the Department issued a Letter of Warning (LOW) to the Respondent as a result of the violations observed during the September 29, 2014, investigation. The LOW issued by the Department requested that the Respondent: i) cease all land disturbance and sewer installation activities until the Respondent obtains a permit authorizing land disturbance activities and a construction permit for the sewer extension is obtained; ii) immediately install erosion control measures to prevent erosion and movement of sediment from the site; iii) obtain a land disturbance permit within seven days of the date of the LOW; iv) and submit to the Department an application for a construction permit within 30 days of the date of the LOW.

7. The Respondent failed to complete the actions requested in the Department's October 31, 2014, LOW and on December 10, 2014, the Department issued a second LOW to Respondent for the continuing violations. In this correspondence the Department offered to meet the Respondent at 10 a.m. on December 23, 2014, at the Department's Southwest Regional Office. The Respondent did not attend the meeting and did not submit a response to the Department's December 10, 2014, LOW.

8. On December 10, 2014, Department staff conducted a follow up inspection at the site and found that the sewer extension project appeared to have been completed. Staff also observed that the disturbed areas were not stabilized and BMPs had not been installed to prevent sediment from eroding into the tributary to Short Creek. Department staff observed that the earthen dam in the tributary to Short Creek had been removed; however, sediment deposits still remained in the tributary to Short Creek.

9. On February 25, 2015, Department staff conducted a compliance inspection of the site and observed the same conditions documented during the previous inspections. On April 8, 2015, the Department issued Notice of Violation No. 16004SW to the Respondent for the violations observed during the February 25, 2015, inspection.

10. On December 3, 2015, the Respondent obtained Missouri State Operating Permit No. MO-RA07545 (Permit) authorizing land disturbance activities at the site. The Permit will expire by its own terms on February 7, 2017.

11. On November 17, 2016, Department staff conducted a site visit and observed that the disturbed areas have been stabilized with vegetation.

STATEMENT OF VIOLATIONS

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

12. The Respondent operated, used, disturbed land or maintained an existing stormwater point source, sediment and land disturbance site, which intermittently discharges to a tributary to Short Creek, waters of the state, without a Permit, in violation of Sections 644.051.2, 644.076.1, RSMo and 10 CSR 20-6.200(1)(A).

13. On February 25, 2015, the Respondent caused pollution of a tributary to Short Creek, waters of the state, 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.

14. On February 25, 2015, the Respondent discharged water contaminants into waters of the state 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.

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.

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 as the Respondent under this AOC.

17. Sections 644.076.1 and 644.079, RSMo, authorize the imposition of penalties for violations of the MCWL and establish monetary penalties of up to \$10,000 per day per violation. 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 an administrative penalty in the amount of \$15,000. The parties further agree that \$1,500 shall be paid upfront and the remaining \$13,500 will be suspended on the condition the Respondent complies with the conditions and requirements of this AOC and does not violate the MCWL and its implementing regulations for a period of two years from the effective date of this AOC. The payment in the amount of \$1,500 shall be in the form of a check made payable to the "Taney County Treasurer, as custodian of the Taney County School Fund" and is due and payable upon execution of this AOC by the Respondent. 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 65102-0477

18. Prior to initiating any future land disturbance activity, the Respondent agrees and is ordered to require all contractors conducting land disturbance activities for the Respondent to comply with the conditions and requirements of the applicable Permit including but not limited to developing a Stormwater Pollution Prevention Plan (SWPPP) as required by the Permit and implementing and/or installing BMPs described in the SWPPP to prevent sediment loss from the disturbed areas to prevent violations of the Missouri Water Quality Standards established in 10 CSR 20-7.031.

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

SUBMISSIONS

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

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

OTHER PROVISIONS

21. Should the Respondent fail to meet the terms of this AOC, 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 per day
31 to 90 days	\$250 per day
91 days and above	\$500 per day

Stipulated penalties will be paid in the form of a check made payable to "Taney County Treasurer, as custodian of the Taney 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

22. 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 AOC resolve any future violations of this AOC or any law or regulation. Consistent with 10 CSR 20-3.010(5), this AOC shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

23. 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 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 within are expressly set forth herein. The terms of this AOC supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

24. 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.

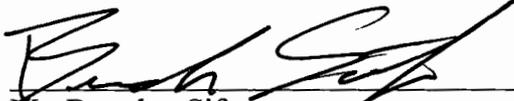
25. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the Respondent for its records.

NOTICE OF APPEAL RIGHTS

37. 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), or any other source of law.

SIGNATURE AUTHORITY

Agreed to and are ordered on this 31 day of January, 2017



Mr. Brandon Sifers
Frontline Development, LLC

Agreed to and so Ordered on this 16 day of February, 2017



DEPARTMENT OF NATURAL RESOURCES
David J. Lamb, Acting Director
Water Protection Program

c: Ms. Cynthia Davies, Director, Southwest Regional Office
Ms. Diane Huffman, Environmental Protection Agency
General Counsel's Office
Accounting Program