

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Mr. Keith Henke)
) **Order No. 2018-WPCB-1557**
)
 Proceeding under the)
 Missouri Clean Water Law)

NOTICE AND ORDER TO ABATE VIOLATIONS

CERTIFIED MAIL # 7099 3220 0009 3706 9206
RETURN RECEIPT REQUESTED

TO: Mr. Keith Henke
Sunrise RV Park
4530 Brandes Road
Moscow Mills, MO 63362

You are hereby notified that on this date the Missouri Department of Natural Resources (Department) has issued this Notice and Order to Abate Violations (Order) to Mr. Keith Henke (Respondent), under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically Sections 644.056 and 644.079 RSMo.

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, additional penalties of up to \$10,000 per day for each day or part thereof of non-compliance, 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. Records from Lincoln County identify the Respondent as the owner of the property on which Sunrise Recreational Vehicle Park (RV Park) operates, located at 105 Battlefield Circle, Moscow Mills, Lincoln County, MO. The RV Park provides water and sewer services for one permanent residence, a laundry house with a small kitchen, and approximately 56 pads for recreational vehicles. The wastewater system serving the RV Park allegedly consists of 4 septic tanks that receive wastewater from 6 sewer mains throughout the park. Two sewer mains and 3 septic tanks feed into the fourth septic tank and wastewater is pumped onto the adjacent pasture through a spray irrigation system. Overflow of wastewater from the fourth septic tank discharges from a pipe to a tributary to Big Creek.

2. The Respondent's wastewater system is a point source as defined in Section 644.016(16), RSMo.

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

4. Pursuant to Section 644.051.1(1), RSMo, it is unlawful for any person to cause pollution of any waters of the state or to place or cause or permit to be placed any water contaminant in a location where it is reasonably certain to cause pollution of any waters of the state.

5. Pursuant to Section 644.051.1(2), RSMo, it is unlawful for any person to discharge any water contaminants into any waters of the state which reduce the quality of such waters below the water quality standards established by the commission.

6. Pursuant to Section 644.051.2, RSMo, it is unlawful for any person to operate, use or maintain any water contaminant or point source in the State of Missouri that is subject to

standards, rules or regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such person holds an operating permit from the Missouri Clean Water Commission.

7. Pursuant to 10 CSR 20-6.015(2)(A), all persons who build, erect, alter, replace, operate, use or maintain water contaminant sources, point sources facilities for storage, treatment, land application or disposal of process wastes which are designed, constructed and operated so as not to discharge to waters of the state or will have infrequent discharges shall apply for construction and operating permits.

8. On February 27, 2017, the Department received an environmental concern regarding a discharge of wastewater from the Respondent's RV Park.

9. On March 3, 2017, Department staff conducted an investigation of the environmental concern received by the Department on February 27, 2017. The Respondent granted Department staff access to the property. Staff observed sewage discharging from a pipe into a small pit at the southeast corner of the property that was overflowing into a tributary to Big Creek. The Respondent informed staff that the discharge was coming from the septic tank due to a pump failure that occurred about six months ago and they had been working on getting a replacement. The Respondent agreed to pump the septic tank to prevent discharges. Later that day on March 3, 2017, Department staff received emails from the Respondent's wife, Ms. Laura Henke, which included documentation that the septic tank was pumped.

10. On March 31, 2017, the Department issued Referral Notice of Violation No. SL170142 to the Respondent for violations found during the March 3, 2017, investigation.

11. On April 27, 2018, the Department's St. Louis Regional Office received an environmental concern reporting the creek on his property was full of wastewater from the Sunrise RV Park.

12. On April 27, 2018, Department staff spoke to the Respondent who stated that he had replaced the pump shortly after the Department's March 3, 2017, investigation and that he recently learned the pump had failed again and was ordering a new pump. Department staff informed the Respondent that he must pump and haul wastewater from the wastewater system to prevent discharges of wastewater from the system.

13. On May 1, 2018, Department staff conducted an investigation of the wastewater system serving Sunrise RV Park and found that the Respondent was pumping wastewater from a septic tank and onto an adjacent field through a hose. Department staff observed wastewater overflowing from the septic tank through the visible pipe into a small pit. Staff observed wastewater discharging from the small pit into a tributary to Big Creek. Staff observed the water in the tributary had a grey coloration continuing from the location of the overflow, for approximately 200 feet downstream. Staff informed the Respondent that he cannot pump wastewater onto the field and that he must pump and haul the wastewater to a permitted wastewater treatment facility. The Respondent informed staff that he is in the process of replacing the pump so that the wastewater can be land applied using the land application system. Staff informed the Respondent that an operating permit is required for the land application system and he should discontinue the use of the land application system and pump and haul the wastewater until he obtains a Missouri State Operating Permit.

14. The Respondent did not obtain a construction permit from the Department for the construction of the wastewater treatment system nor has the Respondent obtained a Missouri State Operating Permit to operate, use or maintain the wastewater treatment system.

15. Department staff have met with the Respondent on two separate occasions and explained the violations documented by the Department, and the steps required to achieve compliance with the MCWL and its implementing regulations. As of the date of this Order, the Respondent has failed to take the necessary steps to mitigate the ongoing environmental impact and human health hazards resulting from operation of a wastewater treatment facility without a Missouri State Operating Permit and discharge of water contaminants into water of the state, in violation of the MCWL and its implementing regulations.

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

STATEMENT OF VIOLATIONS

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

17. 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, or applicable subsection of 10 CSR 20-7.031(C);

18. Failed to obtain a Missouri State Operating Permit prior to discharge from a wastewater treatment facility, in violation of Sections 644.051.1(3) and 644.076.1, RSMo, and Regulation 10 CSR 20-6.010(5)(A); and

19. Caused or permitted construction, installation or modification of water contaminant sources, point sources, facilities for storage, treatment, land application or disposal

of process wastes without first receiving a construction permit, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.015(2)A.

CORRECTIVE ACTIONS

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

20. Upon the effective date of this Order, cease all discharges of wastewater and pump and haul the wastewater generated by the RV Park to a wastewater treatment facility permitted by the Department and with the capacity to treat the wastewater. Continue pumping and hauling wastewater as necessary, to prevent any discharge of wastewater until such a time that the wastewater flow from the system is conveyed to a centralized wastewater treatment and collection system, or the Respondent acquires a permit from the Department for the discharge or land application of wastewater from the RV Park. Maintain pumping and hauling receipts and submit copies of the receipts to the Department each month. The records shall be submitted to the Department by the 10th day of the following month and include the date the wastewater was pumped; number of gallons pumped; and the name of the wastewater hauler and the name of the permitted wastewater treatment facility accepting the wastewater.

21. Within 60 days of the effective date of this Order, submit to the Department for review and approval an Engineering Report and as-built plans and specifications, prepared and sealed by a professional engineer licensed to practice in the State of Missouri evaluating the existing wastewater system, such as but not limited to: design average flow, peak flow, hydraulic retention time, loading and dosing calculations, emergency operations, and equipment sizing. The Engineer Report shall certify that the wastewater system meets the requirements for a land application system, to be permitted by the Department or identify the necessary upgrades

to meet the minimum requirements. Additionally, the Engineering Report shall evaluate the wastewater system and identify alternatives to upgrade, replace, or eliminate the wastewater treatment facility. If applicable, the Respondent shall also submit a complete antidegradation submittal pursuant to the Missouri Antidegradation Rule and Implementation Procedure; and use these evaluations to recommend one of the alternatives that will result in compliance with the MCWL and its implementing regulations. The Engineering Report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8.

22. Within 15 days of receipt of Department comments on the Engineering Report, respond in writing to the Department addressing all Department comments on the Engineering Report and as-built plans and specifications to the Department's satisfaction.

23. Within 15 days receipt of letter from the Department accepting the current wastewater system based on the Engineering Report, submit a completed construction permit application, construction permit fee, as-built plans and specifications, operating permit application, and operating permit fee.

24. Within 30 days receipt of letter from the Department approving the Engineering Report recommending replacement or upgrades the existing wastewater treatment system, submit to the Department for review and approval, a complete application for a construction permit, along with plans, and specifications sealed by a professional engineer licensed to practice in the State of Missouri and the applicable permit fee for the improvements or replacement of the wastewater treatment system recommended in the approved Engineering Report. The plans and specifications shall be developed in accordance with 10 CSR 20-8.

25. Within 15 days of receipt of Department comments on the construction permit application plans and specifications, respond in writing to the Department addressing all Department comments on the plans and specifications to the Department's satisfaction.

26. Within 180 days of the date the Department issues a construction permit, complete construction pursuant to the plans and specifications submitted to the Department and achieve compliance with all applicable permitted effluent limitations.

27. Within 15 days of completing construction, submit to the Department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer registered in the State of Missouri certifying that the project was completed in accordance with Department approved plans and specifications and if applicable, a complete application for the operating permit, including the applicable fee.

PENALTY

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

28. Pursuant to Section 644.079 RSMO and 10 CSR 20-3.010, the Department assessed an administrative penalty in the amount of \$4,000 of which \$2,000 shall be suspended for a period of two years as described in Paragraph 32 below.

29. Within 30 days from the date of issuance of this Order, the Respondent is ordered to pay to the Department an administrative penalty in the amount of \$2,000.

30. Such payment shall be made by check made payable to: Lincoln County Collector as Custodian of the Lincoln County School Fund.

31. Such payment must be delivered to the Department of Natural Resources, Accounting Program, P.O. Box 477, Jefferson City, MO 65102-0477, for forwarding to the Lincoln County Collector.

32. The suspended penalty described in Paragraph 28 in the amount of \$2,000 for a period of two years on the condition that the Respondent does not violate the MCWL, or the terms of this Order, and including the requirements of Paragraphs 20 through 27. Upon determination that the Respondent failed to meet the terms of this Order, the Department shall send a written demand for the suspended penalty to the Respondent. The Respondent shall have 15 days from receipt of the written demand to submit the suspended penalty to the address listed in Paragraph 33.

33. Such payment must be delivered to the Department of Natural Resources, Accounting Program, P.O. Box 477, Jefferson City, MO 65102-0477, for forwarding to the Lincoln County Treasurer.

SUBMISSIONS

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

Mr. Bradley Allen
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

OTHER PROVISIONS

35. 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.

36. 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.

37. 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 the Respondent. Any changes in ownership or corporate status, including but not limited to, any transfer of assets or real or personal property, shall not relieve the Respondent obligations to comply with this Order.

38. 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

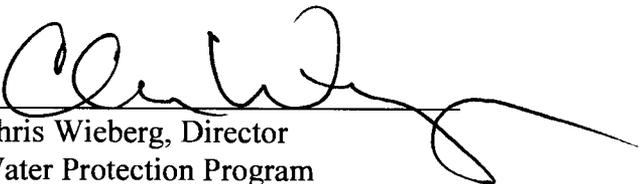
39. Anyone adversely affected by this decision may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. Appeal may be taken by the filing of a petition or notice of appeal with the AHC 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, MO 65102-1557
phone: 573-751-2422
fax: 573-751-5018
website: <http://ahc.mo.gov>

SIGNATURE AUTHORITY

SO ORDERED on this 17th day of September 2018 by:

DEPARTMENT OF NATURAL RESOURCES


Chris Wieberg, Director
Water Protection Program

c: Ms. Dorothy Franklin, Director, St. Louis Regional Office
General Counsel's Office
Accounting Program