

IN THE CIRCUIT COURT OF BENTON COUNTY, MISSOURI

STATE OF MISSOURI ex rel. )  
Attorney General Chris Koster and )  
Missouri Department of )  
Natural Resources, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JOSEPHINE BAKER and )  
LAKE HILLS MOTEL, INC., )  
 )  
Defendant. )

**FILED**

OCT 2 2015

Clerk of the Circuit Court  
Benton County

Case No. 12BE-CC00042-01

**Final Judgment and Order**

On the 28th day of September, the above captioned matter came before this Court for trial on the merits of Plaintiff's Petition for Injunctive Relief and Civil Penalties.

Plaintiff State of Missouri by its relators the Missouri Attorney General's Office and the Missouri Department of Natural Resources ("Department") appeared by attorney Jacob T. Westen. Defendants Ms. Josephine Baker and Lake Hills Motel Inc. appeared by attorney David Moen. Defendants did not appear in person.

After a bench trial wherein testimony was presented and evidence adduced, the Court makes the following findings of fact and conclusions of law; and issues the following orders:

## **Findings of Fact**

1. This matter was brought before the court by the Missouri Attorney General's Office on behalf of the State and the Department pursuant to § 644.076 RSMo of the Missouri Clean Water Law.
2. The Department is a state agency created under § 640.010 RSMo to administer programs relating to environmental control, including the Missouri Clean Water Law §§ 644.006 to 644.150 RSMo
3. Defendant Josephine Baker is a resident of Missouri who lives in Springfield, Greene County, Missouri.
4. Defendant Lake Hills Motel, Inc. is a Missouri corporation good standing, with its principal place of business located at 1231 E. Walnut St., Springfield, Greene County, Missouri.
5. At all times relevant, Defendants operated the Lake Hills Motel ("Motel"), located at 38535 Highway 93, Warsaw, Benton County, Missouri.
6. Defendant Baker, either alone or in conjunction with others, exercised control over the operations over Defendant Lake Hills Motel, Inc.
7. Defendants have owned the Motel and the real estate where it is located since the 1990's, and that the Motel is served by a single-cell wastewater lagoon ("Lagoon").

8. Prior to Defendant Baker's involvement, the previous owner of the Motel obtained a Missouri State Operating Permit, No. MO-0108138 ("Permit") for a discharge lagoon.

9. The Permit identified the Lagoon as a discharge lagoon, with one outfall for wastewater effluent.

10. Defendant Baker submitted an application to the Department to renew the Permit in August 29, 1996.

11. The application to renew the Permit for the Lagoon identified that the Lagoon had one discharge point.

12. On January 17, 1997, the Department issued a renewed Permit, identifying that the Lagoon had one outfall where discharge could occur.

13. The term of the Permit required that upon discontinuation of use, the Lagoon must be closed according to a Department-approved closure plan ("Closure Plan").

14. Sometime in the year 2000, the Motel connected to the Benton County Sewer District #1 and ceased using the Lagoon.

15. Section 644.016(25) RSMo defines a "water contaminant source" as the point or points of discharge from a single tract of property on which is located any installation, operation or condition which includes any point source defined in sections 644.006 to 644.141 and nonpoint source pursuant to any federal water pollution control act, which causes or permits a water

contaminant therefrom to enter waters of the state either directly or indirectly

16. Section 644.016(24) RSMo defines a "water contaminant" as any particulate matter or solid matter or liquid or any gas or vapor or any combination thereof, or any temperature change which is in or enters any waters of the state either directly or indirectly by surface runoff, by sewer, by subsurface seepage or otherwise, which causes or would cause pollution upon entering waters of the state, or which violates or exceeds any of the standards, regulations or limitations set forth in sections 644.006 to 644.141 or any federal water pollution control act, or is included in the definition of pollutant in such federal act.

17. For wastewater treatment facilities that discharge effluent, 10 CSR 20-6.010(12) Requires that:

(A) Persons who cease operation or plan to cease operation of waste, wastewater, and sludge handling and treatment facilities shall close the facilities in accordance with a closure plan approved by the department.

(B) Operating permits under section (5) of this rule or under 10 CSR 20-6.015 are required until all waste, wastewater, and sludges have been disposed of in accordance with the closure plan approved under subsection (12)(A) of this rule.

## **Conclusions of Law**

21. This Court has jurisdiction over the subject matter of this action and over the parties hereto. This Judgment covers matters alleged in the State of Missouri's Petition.

22. The Lagoon is a wastewater contaminant source under 644.016(25) RSMo.

23. The Lagoon was issued a valid Permit.

24. Under the Department's regulatory scheme, discharging, and non-discharging lagoons are required to be closed when not in use. Non-discharging lagoons exempt from permitting are required to be closed when not maintained according to the regulations.

25. When a lagoon is to be closed, it must be closed pursuant to a Department approved closure plan.

26. The Lagoon has not been used by the Motel for some time.

27. Defendants did not maintain the Lagoon to preserve under the exempt lagoon requirements in 10 CSR 20-6.015(5)(2)(B)2 by not refilling the Lagoon with at least three feet of water and or allowing vegetation to grow within the lagoon basin, compromising the integrity of the basin.

28. Defendants have not submitted a Closure Plan to the Department for review and approval.

29. The Lagoon's continued existence presents a risk for a future discharge of water contaminants.

30. The Court sustains Count II of the Petition in that Defendants have violated 10 CSR 20-6.010(12)(A) and the Permit by failing to submit a Closure Plan to the Department and failing to close the Lagoon.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

A. The provisions of this Judgment shall be binding upon the parties to this Judgment as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or will be acting in concert or privity with, on behalf of the parties to this judgment or their agents, servants, employees, heirs, successors, and assigns.

B. Defendants are permanently ordered and enjoined to obey, abide by and comply with this Judgment, the Missouri Clean Water Law, Chapter 644.010 *et seq.*, RSMo, and the rules and regulations promulgated thereunder.

C. Defendants are assessed a civil penalty in the amount of \$7,300.00, calculated at \$10.00 per day for the past two years.

D. One half of the civil penalty, or \$3,650.00, shall be suspended for a period of two years from the entry of this Judgment, on the condition that Defendants comply with the Missouri Clean Water Law.

E. Within thirty days (30) from the execution of the Judgment by the Court, Defendants are hereby ordered to forward \$3,650.00 in civil penalties in the form of a certified check, made payable to the "*State of Missouri (Benton County)*," to the Benton County Clerk, to be held in the Clerk's Registry while Defendants complete the below Schedule of Compliance. The amount shall remain held by the Court until such time that Defendants have filed a notice with the Court identifying satisfaction of the below-ordered schedule of compliance. If Defendants fail to complete the below schedule of compliance within the allotted time, the Defendants shall have forfeited the certified check, and that amount shall be executed upon immediately.

F. Defendants are ordered to close the Lagoon, pursuant to the following Department-approved Closure Plan:

i. Within Sixty (60) days of the execution of this Judgment, Defendants are ordered to:

a. Disable the influent pipe (pipe) to the Lagoon by permanently sealing the end of the pipe and filling the pipe with concrete;

18. Missouri Clean Water regulation 10 CSR 20-6.015 defines a “no-discharge facility” as a facility designed, constructed and operated to meet each of the following conditions:

A. To hold or irrigate, or otherwise dispose without discharge to surface or subsurface waters of the state, all process wastes and associated storm water flows except for discharges that are caused by catastrophic and chronic storm events;

B. Process wastes are not land applied during frozen, snow covered or saturated soil conditions; and

C. Basins are sealed in accordance with 10 CSR 20-8 and there are no subsurface releases in violation of 10 CSR 20-7.015 or section 577.155 RSMo.

19. Regulation 10 CSR 20-6.015(3)(B)6 provides that there is an exemption from non-discharge permitting requirements for nondischarging facilities for domestic wastewater flows of three thousand gallons per day (3,000 gpd) or less.

20. Regulation 10 CSR 20-6.015(5) Provides for the closure of non-discharge lagoons and the closure or post-operation management of exempted non-discharge lagoons.

b. Install appropriate erosion run-off best management practices (such as silt fencing) prior to the demolition of the berms to prevent sediment from eroding offsite;

c. Demolish all lagoon berms by pushing berm soil toward the interior of the lagoon area, and grade the area to the original contour of the hillside; and

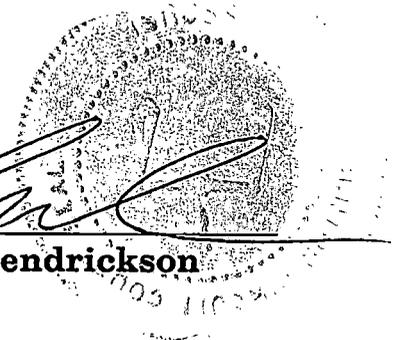
d. Seed the disturbed areas with perennial vegetation to prevent future erosion and sediment transfer offsite.

ii. Within seven (7) days of completing the closure, Defendants are ordered to submit written documentation to the Court and the Department that the lagoon has been closed, including photographs.

iii. Within thirty (30) days of completing the closure, Defendants are ordered to submit a completed Department Form J, Request for Termination of a State Operating Permit to: Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, Missouri 65102-0176.

**IT IS SO ORDERED.**

  
**Hon. Michael O. Hendrickson**  
**Circuit Judge**



Dated this 2 day of October, 2015