

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Casa de Loco, LLC)
 and)
 Mr. Larry Owens)
) **Order No. 2017-WPCB-1474**
)
 Proceeding under the)
 Missouri Clean Water Law)

**NOTICE AND ORDER TO ABATE VIOLATIONS
AND PAY ADMINISTRATIVE PENALTIES**

**SERVE BY CERTIFIED MAIL # 7016 0600 0000 2592 8239
RETURN RECEIPT REQUESTED**

**TO: Mr. Larry Owens
Casa de Loco, LLC
P.O. Box 1974
Camdenton, MO 65020**

You are hereby notified that on this date the Missouri Department of Natural Resources (Department) has issued this Notice and Order to Abate Violations and Pay Administrative Penalties to Mr. Larry Owens and Casa de Loco, LLC (Respondents) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically Sections 644.056 and 644.079, RSMo. Mr. Owens and Casa de Loco, LLC, may be collectively referred to as the Respondents for purposes of this Order.

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. Casa de Loco, LLC is a Missouri Limited Liability Company registered with the Missouri Secretary of State. Mr. Larry Owens is listed as the organizer of Casa de Loco, LLC, and exercises control over its daily operations. The Respondents own and operate a business located at 442 Riverbird Lane near Camdenton, Missouri, which is commonly known as Casa de Loco. Wastewater generated by the business discharges to a point source that consists of an above ground storage tank that is followed by approximately 60 feet of perforated pipe that was installed below grade. The business offers wine tasting, a food service operation for guests, a venue for wedding receptions and lodging. According to the Camden County Geographic Information System, the business is located in the NE ¼, SW ¼ and NW ¼, SE ¼ and SE ¼, NE ¼ and S ½, SW ¼, NE ¼, and E ½ in Camden County.

2. Section 644.016(16), RSMo defines a "Point Source", as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

3. Section 644.051.2, RSMo makes it unlawful for any person to build, erect, alter, replace, operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of sections 644.006 to 644.141, RSMo unless such person holds a permit under Chapter 644, RSMo.

4. On August 11, 2014, Department staff conducted a compliance inspection at the Respondents' business and observed wastewater discharging from a pipe connected to the tank.

5. On November 4, 2014, Department staff conducted a compliance inspection the Respondents' business and observed wastewater discharging from a pipe connected to the tank and water seeping from the ground down gradient from the discharge. Department staff collected samples of the discharge from the pipe and at seep. Sample results showed that the discharge and seep contained water contaminants associated with domestic waster. The E. coli levels in both samples were greater than 2,419.6 mpn/100ml. Ammonia as Nitrogen levels from the water discharging from the pipe and the seep were 6.12 mg/L and 4.63 mg/L, respectively.

6. On December 18, 2014, Department staff conducted a follow up inspection at the Respondents' business and observed wastewater discharging from a pipe connected to the tank and water seeping from two locations down gradient from discharge.

7. On January 12, 2015, the Department issued Notice of Violation (NOV) No. 15936SW to the Respondents for operating a water contaminant or point source without a Missouri State Operating Permit (Permit).

8. On October 28, 2016 the Department sent correspondence to the Respondents by certified mail describing the violation found during inspections of the Respondents' business. In this correspondence the Department also offered the Respondents the opportunity to schedule a meeting with Department staff to discuss the process to resolve the violation through a negotiated agreement.

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

STATEMENT OF VIOLATIONS

The Respondents have violated the MCWL and its implementing regulations as follows:

10. Since August 11, 2014, the Respondents operated, used or maintained a point source which intermittently discharges to a tributary to Weaver Creek, waters of the state, without a Permit, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

CORRECTIVE ACTIONS

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

11. Within ten days of the effective date of this Order, disconnect the wastewater treatment plant (WWTP) from the subsurface piping and cap the pipe so that are no discharge from the tank. Prevent any future discharge of wastewater by pumping and hauling the wastewater to a WWTP permitted by the Department with the capacity to treat the wastewater. Maintain pumping and hauling receipts and submit copies of the receipts to the Department each month by the 10th day of the following month. The receipts shall include the date the wastewater was pumped; number of gallons pumped; and the name of the wastewater hauler and the name of the permitted WWTP accepting the wastewater.

12. Within 60 days of the effective date of this Order, submit to the Department an engineering report (PER) prepared by a professional engineer licensed to practice in the State of Missouri evaluating the existing WWTP with recommendations to bring the existing WWTP into compliance with the MCWL. If applicable, 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.

13. Within 30 days of receipt of Department comments on the PER, respond in writing to the Department addressing all Department comments on the engineering report to the Department's satisfaction.

14. Within 60 days of Department approval of the engineering report, submit to the Department for review and approval, a complete application for a construction permit, plans, and specifications sealed by a professional engineer licensed to practice in the State of Missouri, and the applicable permit fee for the improvements recommended in the Department approved engineering report.

15. Within 30 days of receipt of Department comments on the construction permit application, respond in writing to the Department addressing all Department comments on the construction permit application, plans and specifications to the Department's satisfaction.

16. Within 90 days of the date the Department issues a construction permit complete construction pursuant to the Department approved plans and specifications and submit to the Department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer registered in the State of Missouri and a complete application for a Permit, including the applicable fee.

17. The Respondents are ordered to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

PENALTY

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

18. The amount of the administrative penalty included herein was assessed according to the criteria of 10 CSR 20-3.010. From a gravity-based analysis, the violations posed at least a minor potential for harm based on the potential risk to human health, safety and the environment. The violations were also at least a moderate deviation from the standard required by the MCWL and its implementing regulations. Using the gravity-based matrix, and finding both the deviation from the standard and the potential for harm, the base penalty falls within a range of \$1,501 to \$2,500 and the economic benefit for the past 24 months totals \$6,914. Since the Department documented one violation of the MCWL, and the Respondents failed to correct the non-compliance after being informed of the requirements by the Department, an administrative penalty in the amount of \$8,914 is justified.

19. Within 60 days from the date of issuance of this Order, the Respondents are ordered to pay to the Department an administrative penalty in the amount of \$8,914.

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

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

SUBMISSIONS

22. 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

23. 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.

24. This Order shall apply to and be binding upon the Respondents 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 Respondents. 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 Respondents of their obligation to comply with this Order.

25. For any plan or submittal from the Respondents 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 Respondents. Disapproval may result in further Orders or pursuit of other forms of relief by the Department. If the Department requires revisions, the Respondents 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 Respondents shall

commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

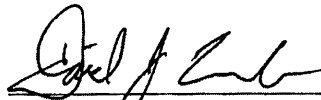
26. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 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 1 day of February, 2017

DEPARTMENT OF NATURAL RESOURCES



David J. Lamb, Acting Director
Water Protection Program

c: Ms. Diane Huffman, Environmental Protection Agency
Ms. Cindy Davies, Director, Southwest Regional Office
Ms. Brook McCarrick, Missouri Attorney General's Office
Ms. Jennifer Eblen, Camden County Department of Health, Wastewater Unit
Missouri Clean Water Commission
General Counsel's Office
Accounting Program