

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Gemini Marine, LLC)
 d/b/a Polestar Marina)
) **Order No. PDWB-2024-272**
)
 Proceeding under Sections 640.100 to)
 640.140, RSMo)

ADMINISTRATIVE ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ADMINISTRATIVE ORDERS

The issuance of Administrative Order on Consent No. PDWB-2024-272 (Order) by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because the Department alleges that Gemini Marine, LLC (the Respondent), doing business as Polestar Marina, is in violation of the Missouri Safe Drinking Water Law, Sections 640.100 to 640.140, Revised Statutes of Missouri (RSMo), and its implementing regulations, 10 CSR 60 (MSDWL&R). This Order is issued pursuant to Sections 640.130.3 and 640.131, RSMo. Failure to comply with this Order is, by itself, a violation of the MSDWL&R that may trigger penalties and other forms of relief pursuant to Sections 640.130 and 640.131, RSMo.

FINDINGS OF FACT

1. The Respondent owns a transient noncommunity public water system (System) as defined by 10 CSR 60-2.015(2)(T)4 and is the supplier of water, as defined by 10 CSR 60-2.015(2)(S)12, in that the Respondent exercises the day-to-day control over and management of the System. This System, known as Polestar Marina, MO6233252, is located at 6171 Highway V, St. Charles, St. Charles County, Missouri and operates seasonally. This System serves water to three service connections through a distribution system to an estimated 70 people. The System consists of three groundwater wells with treatment systems, three storage tanks, and a distribution system.

2. Well No. 1 (WL 20011) is a grandfathered well constructed in 1978 and drilled to an unknown depth. Well No. 1 supplies the office, showers, and rental office trailer. Well No. 2 (WL 20060) is of unknown construction date and depth. Well No. 2 supplies the lift house, gas dock, yard spigot, and courtesy dock spigot, and is not regulated under the Safe Drinking Water Law as long as no water from the well is used for human consumption or direct contact. "Non-potable water" signs are posted at all access points for Well No. 2. Well No. 3 (WL 20061) is a noncompliant well constructed in 1996 and drilled to an unknown depth. Well No. 3 supplies the laundry building with additional showers and the docks.

3. All three wells have treatment systems that predate the Department's activation of the System and consist of a chlorine injection system, followed by a bladder tank, and an ion exchange softening system for iron removal purposes. Each well has been in continuous use since construction and has maintained safe sample results.

4. On January 7, 2022, the Department classified the Respondent's Well No. 3 as a noncompliant well. The construction of substandard drinking water wells increases the risk of

exposure to microbiological and chemical contaminants to those served by wells that meet construction standards. Substandard wells also create an increased risk of contamination of ground water resources, which can adversely affect neighboring private and public wells. Furthermore, wells constructed without proper casing, wells constructed to an inappropriate depth, and wells lacking adequate backflow protection give an unfair economic advantage compared to the cost of wells meeting public water system construction standards.

5. The Respondent purchased the System in August 2022.

6. On February 20, 2024, the Department emailed the Respondent well determinations for Well No. 1 and Well No. 3 and the latest Report of Inspection of the System for review.

7. The Respondent does not have a permit to dispense (PTD) water to the public. A PTD application will only be considered after the Respondent completes the requirements listed below in the Agreement for Corrective Actions Section.

8. This Order is necessary to compel compliance with MSDWL&R and to prevent or eliminate threats to human health and the environment.

STATEMENT OF VIOLATIONS

9. The Department finds that the following violations of the MSDWL&R have occurred, thereby subjecting the Respondent to penalties as set forth in Sections 640.130 and 640.131, RSMo.

10. The Respondent uses a well, constructed after July 27, 1987, and prior to June 15, 2007, that does not meet noncommunity water system construction standards in accordance with the Department's *Standards for Non-Community Public Water Supplies, 1982* and 10 CSR 60-3.010(2)(B).

11. The Respondent dispensed water to the public without first obtaining a written permit to dispense and continues to do so in violation of 10 CSR 60-3.010(2)(A).

AGREEMENT FOR CORRECTIVE ACTIONS

12. The Department and the Respondent desire to amicably resolve all claims that might be brought against the Respondent for the violations alleged above. The parties voluntarily enter this Order and understand and agree that neither the payment of any sum of money nor the execution of this Order by the parties will constitute or be construed as an admission of any wrongdoing or liability whatsoever by any party.

13. Pursuant to Section 640.130.3 RSMo, the Department hereby orders the Respondent, and the Respondent agrees, to complete each of the following corrective actions for its noncompliant well(s):

A. **Corrective Action 1** – The Respondent is ordered and agrees to perform all routine drinking water sample analysis required for noncommunity water systems by 10 CSR 60-4 and 10 CSR 60-15, and as required by the Department, to ensure the quality of water provided to the customers of the System.

- i. The Department reserves the authority to prohibit the Respondent from using Well No. 3 based on the results of the routine sampling, any contamination, surface water influence, maximum contaminant level (MCL) violations, or if any of the conditions in Paragraph 13.A.ii are satisfied. In the event of any contamination, MCL violations, or satisfaction of any of the conditions in Paragraph 13.A.ii, the Respondent shall immediately notify the Department to determine appropriate action and shall continue monitoring as directed by the Department until a Department-approved resolution is in place. Approvable

resolutions include the Respondent removing an identified source of contamination, connecting to a Department-permitted public water system, installing a Department-approved treatment system, or constructing a new Department-approved noncommunity water system well or wells in accordance with the Department's *Standards for Non-Community Public Water Supplies 1982*, and plugging the noncompliant well in accordance with state standards, 10 CSR 23-3.110.

- ii. The Respondent agrees to conduct further corrective action as required by this Order if the well satisfies any of the following conditions:
 - a. One *Escherichia coli* (*E. coli*) positive source water sample requires five additional source water samples. If one of the five additional source water samples is *E. coli* positive resulting in a total of two *E. coli* positive source water samples;
 - b. A combination of two or more Assessment Level triggers within a rolling 12-month period;
 - c. Three or more microbiological monitoring violations within a rolling 12-month period; or
 - d. One or more confirmed nitrate/nitrite result (average of initial and confirmation samples) exceeding the nitrate/nitrite MCLs;
- iii. For any well that triggers the additional corrective action requirements set forth in Paragraph 13.A.ii, the Respondent may continue to use the existing noncompliant well until a resolution is completed for the well, as long as it complies with the following conditions:

- a. The Respondent either provides public notice of contaminants detected in the water to all of its customers, as required by 10 CSR 60-8, including special instructions and precautions as directed by the Department and certifies public notice completion per 10 CSR 60-7010(9), or provides bottled water to all of their customers on a temporary basis upon prior Department approval along with public notification of the availability of bottled water as required by 10 CSR 60-8 or as directed by the Department.
- b. When microbiological samples exceed the Assessment Level triggers only, the Respondent provides temporary disinfection using a chlorine delivery system with adequate contact time to achieve 4-log treatment of viruses and pathogens before or at the first customer, acceptable to and approved by the Department prior to installation. If the Respondent chooses to use a well that meets this condition and thereby uses this option, the Respondent may use only liquid sodium hypochlorite as the disinfecting agent and must maintain a free available chlorine residual of not less than 0.5 milligrams per liter in water entering the distribution system. While in use, the Respondent shall monitor the disinfection residual daily using analytical equipment acceptable to the Department and record the results of this disinfection residual monitoring daily.

- c. Within 60 days of notification of the requirement to add a detention tank or tanks, the Respondent shall submit a Construction Permit Application, one hard copy and one electronic copy of an engineering report, detailed plans, and technical specifications prepared by a professional engineer licensed in Missouri, to the Department's Water Protection Program Public Drinking Water Branch, Permits and Engineering Unit by email at pdwb.engineeringwaterpermits@dnr.mo.gov, or by mail at P.O. Box 176, Jefferson City, MO 65102. The engineer shall design the engineering documents for system improvements in accordance with the Department's *Standards for Non-Community Public Water Supplies 1982*.
- iv. Should it be necessary to construct a new well, the Respondent further agrees that:
 - a. Within 60 days of notification of the requirement to construct a new well or determination by the Respondent that the construction of a new well is necessary, the Respondent shall submit a schedule to install the new well along with a Construction Permit Application, one hard copy and one electronic copy of an engineering report, detailed plans, and technical specifications prepared by a professional engineer licensed in Missouri, to the Department's Water Protection Program Public Drinking Water Branch, Permits and Engineering Unit by email at

pdwb.engineeringwaterpermits@dnr.mo.gov, or by mail at P.O. Box 176, Jefferson City, MO 65102. The engineer shall design the engineering documents for system improvements in accordance with the Department's *Standards for Non-Community Public Water Supplies 1982*;

- b. Prior to submittal of plans and specifications, the Respondent shall arrange with the Department for a site inspection to ensure that the proposed location of any new well is in conformance with appropriate construction standards relative to separation distance from any potential contamination source or any other well that may be on the property or on any adjoining property and that the proposed well is the type appropriate for this public water system. The Respondent agrees that no construction or drilling shall take place until the Department has issued a construction authorization; and
- c. Upon completion of the construction, the Respondent's engineer shall certify in writing that construction has been completed in conformance with the requirements of the construction authorization.

B. Corrective Action 2 – The Respondent shall monitor for chlorine residuals when collecting routine bacteriological samples and maintain records at the System for producing to the Department upon request, in accordance with 10 CSR 60-4.080(3).

C. **Corrective Action 3** - Within 60 days of completion of Corrective Actions 1 and 2, the Respondent is ordered and agrees to complete and submit the PTD application attached hereto as Exhibit A.

PENALTY

14. Should the Respondent fail to meet the deadlines outlined in this Order, the Respondent agrees and is ordered to pay stipulated penalties in the amount \$100 per day of noncompliance. Stipulated penalties shall begin to accrue the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Order.

15. Stipulated penalties shall be paid in the form of a certified or cashier's check made payable to St. Charles County Treasurer, as custodian of the St. Charles 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, for forwarding to the St. Charles County Treasurer.

16. The stipulated penalties provided for in this Order do not limit the Department's rights or any other available remedies, where a violation of this Order also constitutes a violation of a statute or regulation; however, where a violation of this Order for which stipulated penalties are provided is also a violation of a statute or regulation, the Respondent may be allowed a credit, dollar for dollar, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

OTHER PROVISIONS

17. This Order shall remain in effect until all corrective actions have been completed and the Department issues a new PTD.

18. The Respondent agrees to continue use of Well No. 2 (WL 20060) only for non-potable use and never for human consumption, and to maintain "non-potable water" signs at all access points for Well No. 2.

19. The Respondent agrees to not add more connections to Well No. 3 (WL 20061). Any modification of the well or any other part of the public water system, including repairs or new construction requires Department approval prior to starting the modification.

20. By signing this Order, the Respondent acknowledges that its Well No.3 is noncompliant with the MSDWL&R. While this Order is in effect, the Respondent agrees to disclose the condition of the well to any prospective purchasers of any properties containing the well, by providing a copy of this Order along with written notice of the presence of the noncompliant well.

21. The terms stated herein constitute the entire and exclusive agreement of the parties with respect to the matters described herein. The terms of this Order supersede all previous notes, conversations, and agreements, whether express or implied. Any modifications of this Order shall be in writing. No changes, alterations, modifications, or qualifications to the terms herein shall be made or be binding unless in writing and signed by the Department. The Respondent may submit a written request to the Department for an extension of time or other modification to this Order. The request must include appropriate justification and documentation.

22. The Department and the Respondent agree that this Order resolves only the specific violations described herein, that this Order shall not be construed as a waiver or a

modification of any requirements of the MSDWL&R or any other source of law, and that this Order does not resolve any claims based on any failure by the Respondent to meet the requirements of this Order, or claims for past, present, or future violations of any statutes or regulations other than those referenced herein. Consistent with 10 CSR 60-6.070(5), this Order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

23. This Order shall apply to and be binding upon the Respondent and any of the Respondent's agents, subsidiaries, successors, assigns, contractors, 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 relieve the Respondent of their obligation to comply with this Order.

24. The requirement of the Respondent to comply with the terms of this Order is not conditioned on the receipt of any federal, state, or local funds. Failure to comply is not excused by lack of federal or state grant funds, or by the processing of any application for the same unless such application is subject to review by the Department and the Department is the cause of said delay. Application for construction grant state revolving loan funds, or any other grants or loans, or delay caused by inadequate facility planning or plans and specifications on the part of the Respondent shall not be cause for extension of this Order.

25. 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 approves or modifies in writing such plan or submittal, it shall become enforceable pursuant to this Order, and the Respondent shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

26. Consistent with Section 640.115.1, RSMo, and 10 CSR 60-3.020(4)(A), the Respondent shall notify the Department in writing by certified mail at least 90 days prior to transfer of ownership or operation of the system, or transfer of ownership of the real property upon which the system is situated.

27. The parties understand this Order will be a public record pursuant to Chapter 610, RSMo.

28. The Respondent agrees to comply with the MSDWL&R at all times in the future. Nothing in this Order forgives the Respondent for any future noncompliance with the laws of the State of Missouri, and the Department expressly reserves the right to address future noncompliance in any manner authorized by law.

29. This Order shall be governed by and construed in accordance with the laws of the State of Missouri.

30. All signatories to this Order acknowledge that they have thoroughly read and reviewed the terms and provisions of this Order and are familiar with the same, that the terms and provisions contained herein are clearly understood by them and have been fully consented to by them.

31. Penalty payments under this Order, including any stipulated penalties, are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i). For purposes of the identification requirement in

Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2)(iii)(A), certain costs incurred by performance of this Order may qualify as restitution, remediation, or costs required to come into compliance with the law. The Respondent is solely responsible for providing to the Department complete, accurate, and necessary information by the close of any applicable tax year to complete a Form 1098-F. 26 CFR § 1.6050X-1 requires the Department to file a Form 1098-F if it reasonably believes that the sum of the Costs and penalty is \$50,000 or more. The Department will not file a form 1098-F unless the Department is aware or has reason to believe the sum of the Costs and penalty is \$50,000 or more; it is the Respondent's responsibility to tell the Department if the sum of the Costs and penalty is \$50,000 or more. The Respondent is required by law to give its taxpayer identification number (TIN) to the Department for the Form 1098-F; the Respondent may be penalized by the U.S. Internal Revenue Service if it fails to furnish its TIN pursuant to sections 26 CFR §§ 301.6723, 301.6724(d)(3), and any other applicable law. However, failure to provide the TIN does not trigger penalties under this Order or state law. Further, the Department shall not be responsible for any incomplete or inaccurate information nor the results of any tax audit. No portion of any penalties paid pursuant to this Order may be used to reduce any federal or state tax obligations, except as authorized by the Internal Revenue Service.

CORRESPONDENCE AND DOCUMENTATION

32. All correspondence, submissions, and documentation with regard to this Order, except as otherwise specified, shall be directed to the following person, subject to change upon written notification from either party:

For the Department:

Mikayla Johnson
Water Protection Program
Public Drinking Water Branch
P.O. Box 176
Jefferson City, MO 65102-0176

For the Respondent:

Karl Kotraba
6171 Highway V
St. Charles, MO 63301

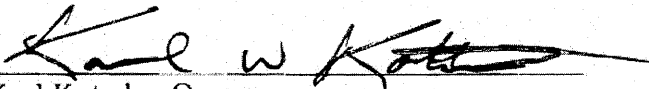
WAIVER OF RIGHT OF APPEAL

By signing this Order, the Respondent waives any right to appeal this Order pursuant to Sections 621.250, 640.010, 640.130, 640.131, or Chapter 536, RSMo; the Missouri Constitution; or any other source of law. This Order will become final and fully enforceable upon the date of the Department's signature.

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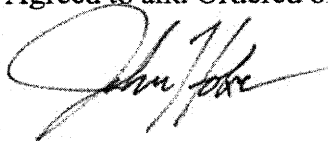
SIGNATURE AUTHORITY

Agreed to on this 29th day of July, 2024



Karl Kotraba, Owner
Gemini Marine, LLC
d/b/a Polestar Marina
PWS ID Number MO6233252

Agreed to and Ordered on this 8 day of August, 2024



DEPARTMENT OF NATURAL RESOURCES
John Hoke, Director
Water Protection Program