

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Jefferson County Public)
 Sewer District) **Order No. 2019-WPCB-1579**
)
 Proceeding under the)
 Missouri Clean Water Law)

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2019-WPCB-1579, 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 anticipates that Jefferson County Public Sewer District (Respondent) will be in violation of the Missouri Clean Water Law (MCWL) upon the Respondent's acquisition of the wastewater treatment facility (WWTF) currently serving the Summer Set Subdivision (Subdivision). 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. Referral to the Attorney General's Office 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 or

administrative penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

FINDINGS OF FACT

1. The Summer Set Property Owners Association (Summer Set POA), originally formed on November 17, 1977, is an Association in good standing with the Missouri Secretary of State, and currently owns the WWTF serving the Summer Set Subdivision (Subdivision).

2. The Respondent is in the process of acquiring the WWTF serving the Subdivision.

3. The Subdivision is located in Sections 15, 16, 21, and 22, Township 39 North, Range 4 East, in Jefferson County, Missouri, and consists of 963 lots with approximately 425 single family homes built on approximately 720 acres of land.

4. The WWTF consists of a three-cell lagoon with aerated primary treatment, ultraviolet disinfection, and sludge retained in the lagoon. The WWTF has a design population equivalent of 1,564, a design flow of 117,300 gallons per day (gpd), and an actual flow of 38,000 gpd. Effluent from the WWTF discharges through Outfall No. 001 to a class C tributary to Falling Rock Branch, pursuant to the conditions and requirements of Missouri State Operating Permit No. MO-0036382 (Permit) which was issued on May 1, 2016, and expired on June 30, 2017.

5. Falling Rock Branch and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.

6. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo

7. The Permit, issued May 1, 2016, to the Summer Set Utility Company (Utility

Company), authorized the discharge of wastewater from the WWTF in accordance with the effluent limitations and monitoring requirements set forth in the Permit. The Permit included a Schedule of Compliance (SOC) from the Utility Company's previous Permit re-issued to the Summer Set POA on February 27, 2013 and expired on April 16, 2014.

8. The SOC required the Summer Set POA and subsequently, the Utility Company, to submit an Engineering Report for upgrading the WWTF by September 1, 2013; submit a Waste Load Allocation Study and Water Quality and Antidegradation Review request by March 1, 2014; submit an application for a construction permit by June 1, 2014; and complete construction and submit a statement of work completed and an application to modify the Permit by June 1, 2016.

9. On December 21, 2016, Department staff conducted an inspection of the WWTF. During the inspection, staff determined the WWTF to be out of compliance with the Missouri Clean Water Law, its implementing regulations, and the Permit.

10. On January 23, 2017, the Department issued Referral Notice of Violation (RNOV) No. SL1683 to the Respondent for failure to: i) upgrade facility as required in Part B Standard Conditions, and Part D, SOC of the Permit (referenced in paragraph 8 of this AOC); ii) comply with the effluent limits for Ammonia as Nitrogen; iii) perform required effluent tests for E. coli, Total Nitrogen, and Total Phosphorus; iv) submit Discharge Monitoring Reports; v) provide at least two operational blowers; and vi) clearly mark the outfall in the field.

11. Failing to fulfill the requirements of Part B Standard Conditions and Part D, SOC of the Permit, is a violation of Section 644.076.1, RSMo and 10 CSR 20-6.010(7)(A). To date, neither the Summer Set POA, nor the Utility Company have completed the required upgrades to the WWTF to satisfy the SOC of the Permit.

12. On December 4, 2018, the Summer Set POA entered into an Asset Purchase Agreement with the Respondent to transfer all assets of the WWTF serving the Subdivision to the Respondent.

13. Upon the closing date of the Asset Purchase Agreement, the Respondent will assume responsibility to operate the WWTF.

STATEMENT OF ANTICIPATED VIOLATIONS

The Department and the Respondent acknowledge that the Respondent is acquiring a WWTF that has a history of violations of the MCWL. The Department and the Respondent anticipate that after the Respondent's acquisition of the WWTF, the WWTF will continue to exceed effluent limitations as set forth in the Permit as a consequence of the existing condition of the WWTF until the Respondent completes upgrades to the WWTF as set forth in the compliance schedule and plan described in Paragraph 21 below. Anticipated violations of the MCWL and its implementing regulations are as follows:

14. Failing to comply with the effluent limits contained in Table A of the Permit, in violation of Sections 644.051.1(3) and 644.076.1, RSMo; and

15. Causing pollution of a tributary to Falling Rock Branch, waters of the state, or placing or causing or permitting to be placed, water contaminants 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.

AGREEMENT

16. The Department and the Respondent desire to amicably resolve all disputes or claims that could arise against the Respondent after acquiring the WWTF for any and all past violations of the MCWL, including but not limited to penalties proposed in or arising from

RNOV No. SL1683, for violations of the MCWL and its implementing regulations, and future anticipated effluent violations that may occur during the term of this AOC.

17. Provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their agents, subsidiaries, affiliates, and lessees, including officers, agents, servants, corporations and any persons acting under, through, or for the parties agreeing hereto. Any changes in ownership or corporate status, including but not limited to, any transfer of assets, or real estate, or personal property, shall not affect the responsibilities of the Respondent under this AOC.

18. The Respondent, in compromise and satisfaction of the allegations or claims relating to the above-referenced claimed violations, without admitting fault, represents and confirms that it is a reorganized common sewer district and political subdivision of the State of Missouri, organized pursuant to the provisions of Chapter 249 of the Revised Statutes of Missouri and reorganized pursuant to Section 204.608, RSMo. (2016). The Respondent shall operate and maintain the WWTF under its authority and consistent with its responsibilities as a reorganized public sewer district.

19. The Department and the Respondent agree that by entering into this AOC, the Respondent is not admitting liability for the violations cited in RNOV No. SL1683. This AOC shall not be deemed to be an admission of liability for any purpose whatsoever.

20. Immediately upon assuming responsibility to operate the WWTF, the Respondent agrees to make a reasonable good faith effort to operate the WWTF in compliance with the Permit, the MCWL, and its implementing regulations.

21. Within 30 days of the effective date of this AOC, the Respondent shall submit to the Department for review and approval, a compliance schedule and plan prepared by the Respondent, to bring the WWTF into compliance with the MCWL.

22. Within 30 days of the closing date of the Asset Purchase Agreement, the Respondent shall also submit to the Department a complete application with all applicable fees to transfer the Permit into the Respondent's name and coordinate with Department staff to obtain all necessary permits and approvals.

23. The Department shall provide good faith assistance to the Respondent in developing and executing the compliance schedule and plan, at the Respondent's request, including facilitating the assistance of the Department's Financial Assistance Center in processing and approval of any State Revolving Fund loan application of the Respondent.

24. Within 30 days of receipt of Department comments on the compliance schedule and plan, the Respondent agrees to respond in writing to the Department addressing all Department comments on the compliance schedule and plan. In the event of a disagreement between the Department and the Respondent, the Parties shall negotiate a mutually agreeable solution.

25. Upon the Department's approval of the compliance schedule and plan, the compliance schedule and plan will become enforceable as a part of this AOC.

26. Within 60 days of completing construction of the upgrades to the WWTF specified in the compliance schedule and plan, the Respondent shall 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 is complete and operable in accordance with Department approved plans and specifications.

27. This AOC shall terminate 90 days after upgrades to the WWTF specified in the compliance schedule and plan are completed.

28. During the term of this AOC, the Department agrees not to bring, or cause to be brought, any civil action against the Respondent for penalties arising out of the above-referenced violations of the MCWL provided that the Respondent complies in good faith with the Department-approved compliance schedule and plan.

SUBMISSIONS

29. All other documentation submitted to the Department for compliance with this AOC 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

31. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent shall notify the Department by telephone or electronic mail: i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the Department, the Respondent shall submit to the Department, for review and approval, a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the Respondent's right to request an extension and may be grounds for the Department to deny the Respondent an extension.

32. Compliance with this AOC resolves only the specific anticipated 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 after this AOC terminates.

33. 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 for 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 expressed or implied, oral or written, except those 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.

34. 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.

35. 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 their records.


NOTICE OF APPEAL RIGHTS

36. 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), the Missouri Constitution, or any other source of law.


SIGNATORY AUTHORITY

Agreed to and Ordered on this 4th day of March, 2019



JEFFERSON COUNTY PUBLIC SEWER DISTRICT
Mr. Douglas Bjornstad, District Manager

Agreed to and Ordered on this 15th day of March, 2019



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