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JUL 8 2008

IN THE CIRCUIT COURT OF RALLS COUNTY, MISSOURI

Missouri Public  
Service Commission

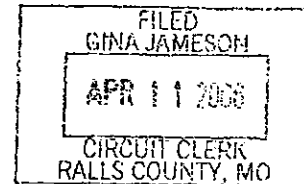
STATE OF MISSOURI ex rel.  
JEREMIAH W. (JAY) NIXON, the  
MISSOURI CLEAN WATER  
COMMISSION and the  
MISSOURI DEPARTMENT  
OF  
NATURAL RESOURCES

Plaintiff,

v.

KEN JAEGER,

Defendant.



Case No. CV805-12CC

JUDGMENT OF CONTEMPT AGAINST DEFENDANT KEN JAEGER

COMES NOW this day the parties hereto, the State of Missouri represented by the Missouri Attorney General's Office and the Defendant represented by his attorney, James F. Lemon, whereupon plaintiffs' Motion for Contempt coming on regularly to be heard and being called, the parties are now ready to proceed, in the matter of the failure of Defendant, Ken Jaeger, to comply with this Court's Judgment and Order of May 3, 2005, is taken up and submitted to Court, and the Court finds as follows:

1. The State filed a Petition for Civil Penalties and Injunctive Relief against Defendant Ken Jaeger ("Defendant") on January 19, 2005, due to Defendant's failure to comply with the Missouri Clean Water Law and implementing regulations at Defendant's Lost Valley Subdivision wastewater treatment system and collection system located in Ralls County, Missouri.

OPC Exhibit No. 7  
Case No(s) SO-2008-0358  
Date 6-23-08 Rptr 45

2. This Court entered a Judgment and Order of Preliminary Injunction Against Defendant Ken Jaeger ("Judgment and Order") on May 3, 2005. A true and correct copy of said Judgment and Order is attached to this Judgment of Contempt and incorporated herein as Exhibit A.

3. At page 2, paragraph 4, of the May 3, 2005, Judgment and Order, Defendant was ordered submit to the Department, for Department review and approval, a preliminary engineering report ("PER") for a no-discharge wastewater treatment system and collection system that contains information required in 10 CSR 20-8.020 and 10 CSR 20-8.110 - 10 CSR 20-8.220. The preliminary engineering report was to include, but was not limited to, the following information:

- A. the current dimensions of the lagoon, which shall include length, width and depth in one-foot increments of depth;
- B. the location of an emergency spillway for the lagoon and a location that discharges wastewater away from established and/or future home sites;
- C. the design permeability of the pond seal;
- D. an estimation of compaction of the seal;
- E. a map of the irrigation site depicting the wetted application area, set back distances and any other descriptions to limitations of irrigation on the area, and the distance from the wetted application area to: existing and proposed dwellings; public use areas, property line, roads and/or highways, sinkholes, losing streams,

other structure or physiographic feature that may provide a direct connection between groundwater and surface, existing potable water supply wells; and

F. an operation and maintenance manual for the collection system, lagoon and land application site;

On August 3, 2005, the Department's Northeast Regional Office received an incomplete preliminary engineering report submitted on behalf of Defendant for a no-discharge wastewater treatment system and collection system to serve the Lost Valley Subdivision, seventy one (71) days delinquent.

4. At page 3, paragraph 5, of the May 3, 2005, Judgment and Order, Defendant was ordered to, on or before May 15, 2005, "land apply the contents of the lagoon so as to achieve two feet of freeboard and notify the Department of Natural Resources when these levels have been reached." On May 19, 2005, a Department investigation revealed that Defendant failed to achieve the two feet of freeboard requirement. On May 26, 2005, Defendant had met the two feet of freeboard requirement, but failed to notify the Department that the two feet had been reached.

5. At page 3, paragraph 6, of the May 3, 2005, Judgment and Order, Defendant was ordered to, on or before September 30 of each year, "land apply the contents of the lagoon to the minimum operating level of two feet from the bottom of the lagoon and notify the Department of Natural Resources when these levels have been reached." According to the information submitted in the revised preliminary engineering

report received on February 8, 2006 the minimum operating level is seven (7.0) feet below the lowest point at the top of the lagoon berm on the southeast corner. On September 30, 2005, staff from the Northeast Regional Office measured the operating level at five and one tenth (5.1) feet below the lowest point at the top of the lagoon berm on the southeast corner, which is greater than the two (2) feet from the bottom requirement. On October 28, 2005, staff from the Northeast Regional Office measured the operating level at five and four tenths (5.4) feet below the lowest point at the top of the lagoon berm on the southeast corner, which is greater than the two (2) feet from the bottom requirement.

6. At page 3, paragraph 8, of the May 3, 2005, Judgment and Order, Defendant was ordered to "notify the Department of Natural Resources' Northeast Regional Office on the morning of the day when any and all land application activity takes place. Such notice shall consist of a telephone call to DNR at (660) 385-8000." Land application records received by the Department's Northeast Regional Office from Defendant for May 3, through August 10, 2005, indicate Defendant land applied May 4<sup>th</sup> through the 26<sup>th</sup>; June 18<sup>th</sup>, 19<sup>th</sup>, 24<sup>th</sup>; July 9<sup>th</sup>, 15<sup>th</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 28<sup>th</sup>; and August 1<sup>st</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup>, 2005. The Department's Northeast Regional Office did not receive notification by telephone from Mr. Jaeger or a representative of Mr. Jaeger for any of the days listed above.

7. At page 3, paragraph 9, of the May 3, 2005, Judgment and Order,

Defendant was ordered to "maintain and provide records to the Department's Northeast Regional Office showing the dates and times of land application, the amount and rate of irrigation water, and the monitoring activities conducted." Land application records provided by Defendant (or on behalf of Defendant) to the Department's Northeast Regional Office do not describe the monitoring activities conducted by Defendant or a representative of Defendant.

8. At page 4, paragraph 15 of the of the May 3, 2005, Judgment and Order, Defendant was ordered to, within twenty (20) days of the date of the May 3, 2005, Judgment and Order, submit to the Department, for Department review and approval, a construction permit application, with appropriate fees, for the collection system serving Lost Valley Subdivision. On August 3, 2005, the Department's Northeast Regional Office received an incomplete construction permit application for the collection system serving Lost Valley Subdivision, seventy one (71) days delinquent.

9. Defendant was capable of complying with all requirements of the May 3, 2005, Judgment and Order.

NOW, THEREFORE, it is ordered and adjudged that Defendant Ken Jaeger is found in contempt of this Court because of his failure to comply with this Court's May 3, 2005, Judgment and Order.

IT IS FURTHER ORDERED, that Defendant Ken Jaeger bring his Lost Valley Subdivision into compliance with the Missouri Clean Water Law, Chapter 644, RSMo, and regulations promulgated thereto, in the following manner:

1. Defendant Ken Jaeger is ordered to immediately comply with all aspects of the May 3, 2005, Judgment and Order.

2. Within sixty (60) days of the date of this Judgment of Contempt, Defendant Ken Jaeger is ordered to complete the following upgrades to the existing wastewater collection and no-discharge wastewater treatment system at the Lost Valley Subdivision so that a Missouri State Operating Permit can be issued for the collection and treatment system:

A. Defendant Ken Jaeger shall submit to the Department for Department Review and approval, a complete application and appropriate fee for a construction permit. This application shall also include plans, specifications, and a final engineering report sealed by an engineer licensed in the State of Missouri. The final engineering report shall comply with 10 CSR 20-8.020 and shall adequately address the following outstanding issues that were not resolved in the February 2, 2006, revision of the PER developed for this collection and treatment system.

i. 10 CSR 20-6.010 (3) identifies Continuing Authorities, which can be issued permits to collect and/or treat wastewater. The PER did not identify

a continuing authority that will accept the collection and treatment system as required by the above regulation. In order to obtain an operating permit, proof of a proper continuing authority shall be submitted as required by 10 CSR 20-6.010(3)(A); and

ii. In accordance with 10 CSR 20-8.020(15)(F)2 the required storage period for this site is 90 days. The PER indicates that the current lagoon system does not meet minimum design criteria for days of storage. In order to obtain an operating permit the permittee shall demonstrate that the lagoon has the required storage; and

iii. A proper irrigation system is required to meet the design and application rates listed at 10 CSR 20-8.020(15)(F) 3 through 7. The irrigation system currently in place does not meet these requirements. In order to obtain an operating permit a properly designed land application system shall be installed; and

iv. 10 CSR 20-8.020(13)(A)4 provides the lagoon seal and seepage requirements. Specific information describing the procedure to be used to determine if the lagoon is seeping, including seepage rates, pollutants to be monitored in the test holes, and how that data will be compared to the wastewater in the lagoon is required; and

v. The Department has identified operating problems with the lift station serving the hotel and theater. This lift station was observed discharging wastewater outside of the collection system. In order to obtain an operating permit for the collection system this lift station shall be repaired and operational control shall be established.

If the Department comments on the application or determines the submitted application to be incomplete, Defendant Ken Jaeger shall address and satisfy said Department comments and resubmit a completed application responsive to Department comments within fifteen (15) days of the date of the Department comment letter. Defendant Ken Jaeger shall retain the services of a professional engineer licensed in the State of Missouri to conduct regular construction inspections during the construction authorized by the construction permit. Defendant Ken Jaeger shall begin construction within twenty (20) days of the issuance of the construction permit and shall complete construction as approved in the construction permit within one hundred and twenty (120) days of the issuance of the construction permit. Defendant Ken Jaeger shall submit to the Department a complete application for the operating permit identifying the continuing authority for the operation, maintenance and modernization of the wastewater collection and treatment system serving the Lost Valley Subdivision and nearby businesses within thirty (30) days of completing the construction. This application for the operation



permit shall also include the appropriate annual fee and an engineer's certification of the construction under this construction permit.

3. Within sixty (60) days of the date of this Judgment of Contempt, Defendant Ken Jaeger is ordered to complete construction on the collection system serving the Lost Valley Subdivision in accordance with said construction permit no. 25-2521. As part of this construction, Defendant Ken Jaeger shall connect the service connections of the existing homes in the Lost Valley Subdivision to the newly constructed sewer collection system and shall retain the services of a professional engineer licensed in the State of Missouri to conduct construction inspections and shall obtain the engineer's certification of construction and shall submit the certification to the Department within thirty (30) days of completing construction.

4. Defendant Ken Jaeger is ordered to immediately repair any and all roads and/or yards that are damaged as a result of the construction activities on the collection system serving the Lost Valley Subdivision at Defendant's own expense.

5. For each day that Defendant Ken Jaeger fails to meet any deadline set forth in this Judgment of contempt, Defendant Ken Jaeger shall pay according to the following schedule:

- A. Five Hundred Dollars (\$500.00) per day for the first thirty (30) days; and
- B. One Thousand Dollars (\$1,000.00) per day for every day after the first thirty (30) days.

6. Defendant Ken Jaeger is ordered to appear before this Court on

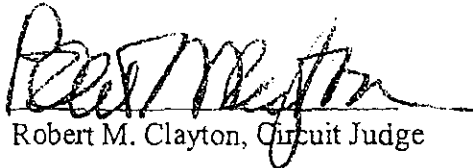
*July 5, 2006, 1:30<sup>PM</sup>* to report on his compliance with this Judgment of Contempt.

7. This Court shall determine at a later date the amount of the fines Defendant

Ken Jaeger shall pay for failing to comply with this Court's May 3, 2005, Judgment and Order and/or for civil penalties for violations of the Missouri Clean Water Law occurring prior thereto.

8. Defendant Ken Jaeger is ordered to pay all costs of this proceeding.

IT IS SO ORDERED.

  
Robert M. Clayton, Circuit Judge

Date: *April 11, 2006*