

Work-in-Progress
Privately Funded Develop-
Homeowner Build Projects
Pierpont Store



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Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, MO 6510-0176
ATTN: NPDES Operating Permits/Permit Comments

Via email to: publicnoticenpdes@dnr.mo.gov

**Re: Draft Missouri State Operating Permit No. MO-0140040
Pierpont Store**

Dear Sir or Ma'am:

Please accept this comment submitted on behalf of the Boone County Regional Sewer District (the "District") regarding draft Missouri State Operating Permit No. MO-0140040 for JSRW Enterprises, LLC at its Pierpont Store facility (the "Permit") issued by the Missouri Department of Natural Resources (the "DNR").

Background

Clean Water Commission regulations at 10 CSR 20-6.010(2) require each permit application to identify the continuing authority that is the owner of, operator of, or area-wide management authority for a water contaminant source, point source, wastewater treatment facility, or sewer collection system with responsibility for compliance with all permit conditions. The regulation establishes five preferential levels for continuing authorities—with Level 1 being the highest and Level 5 being the lowest. The regulation generally requires DNR to issue permits to a higher-preference continuing authority.

Provided that the use of a lower-level continuing authority does not conflict with any area-wide management plan, DNR may only issue a permit to a Level 3, 4, or 5 applicant if it provides proof with its application that a Level 1 or 2 authority: (1) is not available; (2) does not have

jurisdiction; or (3) is forbidden by state or local law from providing service. DNR may issue a permit to lower-level authority applicant that provides proof with its application showing that one of the following requirements listed in paragraphs (2)(C)1.-7. of 10 CSR 20-6.010(2) is met:

- The existing higher authority has issued a waiver declining the offer to accept management of the additional wastewater;
- The existing higher authority declined to respond to the lower-level authority's request for a waiver;
- The lower-level authority submits a to-scale map showing all parts of the legal boundary of the facility's property are beyond 2,000 feet from the collection (sewer) system operated by the higher authority;
- A proposed connection or adoption charge by the higher authority is not economically feasible;
- A proposed service fee on the users of the system by the higher authority is above what is affordable for existing homeowners in that area;
- Terms for connection or adoption by the higher authority would require more than two (2) years to achieve full sewer service; or
- Terms for connection or adoption by the higher authority are not viable or feasible to homeowners in the area.

As DNR is aware, the District is a common sewer district created under Chapter 204, RSMo, a political subdivision, and a public utility. The District's voter-approved territory is all of Boone County, Missouri. The District also has been approved by the Missouri Clean Water Commission (CWC) as a Level 2 continuing authority for areas of Boone County not served by municipal wastewater systems.

By virtue of Chapter 204, RSMo and its status as Level 2 continuing authority, the District has long-term planning authority in Boone County, and it has exercised this authority for decades to promote the public health and environment. In furtherance of this authority, the District has adopted Sanitary Sewer Use Regulations (District's Regulations) prohibiting the ownership and operation of private sewer systems in Boone County without the District's consent.¹ In addition, District Regulations require non-exempt wastewater collection systems and treatment facilities to be conveyed to the District or connected to a District owned or operated public sanitary sewer.²

¹ See §§ 204.320 and 204.330, RSMo; § 644.027, RSMo.; District's Regulations, § 2.7.4.1 ("Unless exempt from the provisions of these regulations, no owner or other person shall operate any wastewater collection system and/or treatment facility not owned by the District except under an operating permit issued by the District."). District regulations operate in tandem with the Boone County Land Use Regulations ("Land Use Regulations") and the Boone County Commission's Zoning Ordinance. Section 3.1 of the Land Use Regulation provides that "No privately owned or operated sewage collection system or treatment facilities shall be permitted except as authorized by public governmental agency having jurisdiction."

² District's Regulations, § 2.7.1.8 and § 2.6.2.3 (Allowing for a private system only "[i]f neither the District under the provisions of these regulations nor any other public or governmental agency having jurisdiction is willing and/or able to provide wastewater collection and treatment services" in an area where such services are required and "a [DNR] issued operating permit is applicable." This regulation further requires DNR to deny transfer of an existing operating permit when the District requires an operator to connect under its Regulations.).

The District's Board of Trustees has also adopted a long-term regional sewer service and treatment plan within Boone County.

Draft Permit

The Permit acknowledges that the facility is located within the jurisdiction of a higher continuing authority—the District—and that 10 CSR 20-6.010(2) requires the higher continuing authority be utilized, if available. The Permit indicates that the District “currently does not have a sewer collection system available to this facility.” *See* Permit, p. 5-6. The Permit notes that the facility “provided a map showing that the closest point to the [District] and City of Columbia’s collection systems was > 2,000 ft.” *Id.* The District does not object to this assertion, but notes that lack of availability is the sole and exclusive basis for which the applicant seeks to utilize a lower-preference continuing authority.

The Permit notes that the applicant may utilize a lower preference continuing authority when a higher-level authority is available provided that it does not conflict with any “regional sewage service and treatment plan” by the higher preference authority. As discussed above, District regulations and long-term sewage service and treatment plan prohibit the ownership and operation of private sewer systems in unincorporated Boone County without the District’s consent. The District has not provided its consent for the applicant to operate a system. Accordingly, no Permit should be issued to the applicant because doing so would be in conflict with a regional sewage service and treatment plan approved for the District.

In the event that DNR issues the Permit without the applicant first receiving the District’s consent, the Permit should be modified. The Permit provides that once the District’s collection system and facility are available, the permittee will either demonstrate use of a lower continuing authority or cease discharge by connecting to the District. *See* Permit, p. 5. The Permit further reflects that the lower continuing authority is valid only until permit expiration, modification, or the District facilities become available and that at permit renewal or modification, the permittee must show that the higher continuing authority is not available or provide a new demonstration for use of a lower continuing authority per 10 CSR 20-6.010(2)(C). *See* Permit, p. 5-6. Because the applicant is relying exclusively on the lack of availability of the District’s collection system and facility to justify use of a lower-level continuing authority, the Permit should also reflect that applicant shall be required to cease discharge by connecting with the District as soon as the District’s collection system and facility become available.

We appreciate your consideration of the foregoing comments. If you have any questions or would like to discuss this matter, please do not hesitate to contact me at cpieper@bbdlc.com or 573-355-5045.

Very truly yours,



Christopher R. Pieper
General Counsel

Boone County Regional Sewer District

cc: Tom Ratermann, Boone County Regional Sewer District