Work-in-Progress
MDNR
Mathis Mobile Home Park (MHP)

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Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, MO 65102-0176
ATTN: NPDES Operating Permits/Permit Comments

**Via email to**: publicnoticenpdes@dnr.mo.gov

**Re: Draft Missouri State Operating Permit No. MO-0099198**
**Mathis Mobile Home Park**

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-0099198 at the Mathis Mobile Home Park facility (the "Permit") issued by the Missouri Department of Natural Resources (the "DNR").

## I. Background

### A. Continuing Authority

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.

**B. The District**

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

[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."

be conveyed to the District or connected to a District owned or operated public sanitary sewer.[2] The District's Board of Trustees has also adopted a long-term plan for providing regional sewer service and treatment within Boone County.

## II. Draft Permit

The Permit acknowledges that the facility is located within the jurisdiction of a higher continuing authority and that 10 CSR 20-6.010(2) requires the higher continuing authority be utilized, if available. The Permit indicates that the applicant is a Level 4 authority but that there is a Level 2 authority available to the facility—the District and the City of Columbia. *See* Permit, p. 6. The Permit indicates that the applicant proposes the use of a lower-level continuing authority based on "[d]ocumentation that the proposed connection or adopting charge by the higher authority would equal or exceed what is economically feasible for the applicant, which may be in the range of one hundred twenty percent (120%) of the applicant's cost for constructing or operating a wastewater treatment system." Permit Fact Sheet, p. 18; *see also* 10 CSR 20-6.010.2(C).4.

The Permit indicates that the "documentation" provided by the facility to make the required demonstration consists of the reporting "an annual operating cost of $3,900.00. . ." Permit Fact Sheet, p. 18. The Permit does not indicate whether DNR conducted any investigation to verify the accuracy of this self-reported annual operating budget.[3] In determining whether the applicant made the required demonstration, DNR appears to have compared 120% of this annual operating cost estimate—$4,680—with an estimate of the District connection charge of $4,800. *Id.* Based on this comparison, DNR determines that utilizing the higher-level continuing authority would represent a 123% increase over the current annual operating cost for the facility. *Id.*

The above economic feasibility analysis fails to comply with 10 CSR 20-6.010.2(C).4. Connection to the District would provide a permanent operational solution, while continued operation by the applicant provides an operational solution for a minimum of five years—i.e. the duration of the Permit—or up to 10 years to accurately reflect the time during which DNR allowed the facility to operate under an expired permit, notwithstanding uncorrected compliance issues found after permit expiration. Accordingly, even accepting the applicant's unverified annual operating cost figure as adequate "documentation," this annual operating cost should be multiplied by at least five years and by up to 10 years, resulting in a minimum of $19,500 for the five-year term of the Permit and $39,000 for a 10-year period under which the applicant may be allowed to operate the facility if the Permit is issued. This would mean that the connection charge to the District would represent a substantial *decrease* from the applicant's reported operating cost.

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[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.).

[3] Relying on an applicant's self-reported annual operating budget without investigating the veracity of the estimate creates an incentive for an applicant to underreport actual operating costs to avoid utilizing a higher-level authority based on economic feasibility.

In addition to the above annual operating cost, DNR should also take into account the additional costs necessary for the applicant to operate the facility in compliance with the Permit. The Permit expressly provides that the "full implementation of this operating permit, **which includes implementation of any applicable schedules of compliance**, shall constitute compliance with all applicable federal and state statutes and regulations. . ." Permit, p. 4 (emphasis added). The Permit imposes a Schedule of Compliance (SOC) requiring the facility to "attain compliance with final effluent limitations as soon as possible but in no case later than **two (2) years** of the effective date of this permit." *See id.* (emphasis in original).[4] The Permit also includes a number of special conditions that will require the applicant to incur additional costs to operate the facility. *See* Permit, p. 4-6. The foregoing are costs for "constructing or operating" the facility that should be added to the five-year or 10-year operational costs discussed above and, if so, would make connection to the District within a range of less than 120% of the applicant's cost for constructing or operating the facility.

Furthermore, the Permit improperly relies on information from the District's website to suggest but not quantify additional costs it believes the applicant may have to incur in order to complete the physical connection to the District. As an initial matter, it is not clear if this information was submitted as part of the application such that it may be considered by DNR in determining whether the applicant has made the required demonstration for use of a lower-level authority. Second, DNR uses this information to improperly opine that "the cost of physical connection is likely to be cost prohibitive for the applicant," while admitting that this "analysis cannot be conducted as the applicant did not provide a cost estimate for connection to the [District] and closure of the existing facility." Permit Fact Sheet p. 18. If the applicant did not provide this information, it is unclear why the agency would take it upon itself to advocate for a Permit that would frustrate the goal of the Clean Water Commission regulations governing continuing authority in encouraging regionalization, particularly when the facility discharges into an impaired waterway. We are not aware whether the applicant has attempted to avail itself of the process described on the District webpage referenced in the Permit, which can include identifying and providing assistance with funding sources such as a Neighborhood Improvement District (NID). *See* Permit Fact Sheet, p. 18 (citing https://bcrsd.com/connecttopublicsewer). Accordingly, the gratuitous reference to costs for completing the physical connection should not be considered for purposes of determining whether the applicant has made the required demonstration for economic feasibility. Based on the foregoing, the applicant has failed to satisfy the requirement of providing proof with its application that satisfies 10 CSR 20-6.010(2)(C).4, and therefore the Permit should not be issued.

Somewhat inexplicably, the engineering report submitted in support of the economic feasibility analysis fails to analyze what DNR even acknowledges to be the most-cost effective option—connection to the District. Because the engineering report fails to evaluate all available alternatives, its conclusion regarding the most cost-effective solution should be disregarded.

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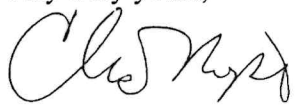
[4] The Permit contemplates that additional costs will be incurred in order to operate the system, providing that "[o]nce the permit holder's engineer has completed facility design **with actual costs associated with permit compliance**, it may be necessary for the permit holder to request additional time within the schedule of compliance." Permit Fact Sheet, p. 10-11 (emphasis added). Indeed, the "suggested milestone" for year 1 is to "**[i]dentify funding source** and hire engineer. Submit plans and specifications to the Department. Apply for construction permit if applicable." *Id.* (emphasis added).

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-level authority. As discussed above, District regulations and long-term 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, the Permit should not be issued to the applicant because doing so would be in conflict with a long-term plan for providing sewage service and treatment on a regional basis within Boone County.

In the event that DNR issues the Permit notwithstanding the failure to satisfy 10 CSR 20-6.010(2)(C).4 and failure of applicant to obtain the District's consent, the Permit should clearly reflect that the lower-level continuing authority is valid only until permit expiration or modification and that at permit renewal or modification, the permittee must provide a new demonstration for use of a lower continuing authority per 10 CSR 20-6.010(2)(C). Because the applicant is relying exclusively on economic feasibility to justify use of a lower-level continuing authority, the Permit should reflect that the applicant is precluded from asserting any alternative justification at permit renewal or modification, since it had the opportunity to attempt a demonstration on other grounds here but did not do so.

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