

From: Heidolph, Erin Meyer <Erin.Heidolph@dnr.mo.gov>
Sent: Wednesday, December 27, 2023 11:51 AM
To: Kevin Sterrett
Cc: Clayton, Joe <Joe.Clayton@dnr.mo.gov>; Bent Tree Harbor Office Staff <benttreeharbor@yahoo.com>; Dan Harman <danharman72@gmail.com>
Subject: Potential subsequent actions if AOC is not signed

Kevin,

I am sending this email in response to your request for information about what may happen to the Bent Tree Harbor community if the vote to sign the AOC does not pass and the BTH Board does not sign the AOC.

First, I'd like to reiterate that the AOC is still the best option for resolution of this enforcement action.

- The AOC allows the BTH community to have a say in the corrective actions included in the AOC;
- The AOC allows for flexibility in the time schedule to address all of the corrective actions;
- The AOC gives the BTH community time to absorb the cost of the corrective actions over a longer period of time to make the necessary steps to achieve compliance more feasible for the community;
- The AOC also allows the community the ability to be evaluated for a conditional allowance so lot owners can keep the existing deviations to the original approval on their lots – with the exception of certain deviations like under-capacity holding tanks and grey water pits;
- The AOC also includes a fully suspended penalty for the violations that have occurred in BTH over the years on the condition that the community complies with the terms of the AOC;
- The AOC also provides protection to the community from other regulatory agencies (i.e. the EPA) or third party environmental groups from initiating their own enforcement actions against the community; and
- The AOC provides protection to the individual lot owners on the condition that each lot owner complies with the AOC as it applies to their lot(s) because the legal action is against the BTH Board currently, not each individual lot owner. If the Board were to dissolve, the enforcement action would then make each individual lot owner an individual responsible party in the enforcement action.

These are all benefits of the AOC; however, if the AOC is not signed, all of these benefits are taken off the table.

- The conditional allowances will no longer be available for any lot owner – all deviations from the original approval will be required to be removed or a centralized collection system will be required to be installed to serve the entire community;
- The time frame to achieve compliance will no longer be a flexible term;
- The full penalty will be sought and updated to include all the additional violations that have accrued since the drafting of the AOC; and
- The protection the AOC provides the community will no longer be available.

I'd also like to reiterate that the violations occurring in BTH have been on the EPA's radar for some time now. It is only because of the current BTH Board's cooperation with the Department of Natural

Resources' Compliance and Enforcement staff, and the expectation that the Board will enter into an AOC, that the EPA has not initiated their own enforcement action against the BTH community.

If the AOC is not signed by the BTH Board, the BTH community can expect the following actions that include, but are not limited to:

- The option of a negotiated resolution to the enforcement action (i.e. the AOC) will no longer be an option;
- The Department of Natural Resources will escalate enforcement action and issue a demand order – a unilateral Abatement Order that is not negotiable and will set a compliance schedule and the corrective action for the BTH community. The Order will also include a penalty amount to be paid immediately upon issuance of the Order;
- If the BTH Board fails to comply with the Order, the case against BTH will be referred to the Attorney General's Office (AGO) for litigation;
- As part of the AGO case, separate lawsuits may be filed against each individual lot owner even if that lot owner's lot(s) in BTH is currently compliant; and
- The EPA may choose to initiate their own enforcement action against the BTH community on top of the escalated enforcement actions from the Department of Natural Resources

I hope this provides some clarification for you on some of the concerns you've discussed with me based on feedback you've received from members of the community. Please let me know if you have any questions.

Thanks!

Erin

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We'd like your feedback on the service you received from the Missouri Department of Natural Resources. Please consider taking a few minutes to complete the department's Customer Satisfaction Survey at <https://www.surveymonkey.com/r/MoDNRsurvey>. Thank you.