

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 City of Springfield)
) **Order No. 2018-WPCB-1551**
)
 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. 2018-WPCB-1551, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because the City of Springfield (City), through its contracted agent, violated the Missouri Clean Water Law (MCWL). 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. Litigation 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 City 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 unrelated to the incident set forth herein, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

FINDINGS OF FACT

1. The City is a “Home Rule” municipality with a population of approximately 166,810 residents. The City owns and operates two Publicly Owned Treatment Plants (POTW). The North POTW (hereafter known as the NWTP) and South POTW (hereafter known as the SWTP). The NWTP consists of a screening, grit removal, anoxic selector, extended aeration, clarifiers, and ultraviolet disinfection with sludge thickening using a rotary drum, and is located in the NE ¼, NE ¼, Section 34, Township 30 North, Range 22 West, of Greene County. The NWTP has a design population equivalent of 68,000, a design flow of 6.8 million gallons per day and an actual flow of 6.8 million gallons per day. Treated effluent discharges to Little Sac River, pursuant to the conditions and requirements of Missouri State Operating Permit No. MO-0103039 (Permit).

2. Pea Ridge Creek and the Little Sac River are waters of the state as the term is defined by Section 644.016(27), RSMo.

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

4. Water contaminants that cause Dissolved Oxygen (DO) to be below 5 mg/L are a violation of specific criteria for water quality standards as defined by 10 CSR 20 7.031 (5)(J).

5. On October 3, 2016, the City notified the Department of a Sanitary Sewer Overflow (SSO) that occurred between the evening of October 1, 2016, and afternoon of October 2, 2016, at a manhole near Grant Street and Pea Ridge Creek and the measures instituted to remedy the violation. The City reported that a contractor hired to clean portions of the City’s collection system left a steel “trash” basket in the sewer line, which resulted in the SSO.

6. On October 2, 2016, Department staff arrived on site and observed brown bottom deposits in Pea Ridge Creek and noted that the water had a cloudy appearance. Staff also observed dead fish in the stream and notified Missouri Department of Conservation (MDC). Samples taken downstream of the SSO source showed a DO concentration of 1.97 mg/L, below the minimum required DO concentration of 5 mg/L.

7. MDC staff determined the SSO resulted in the deaths of approximately 1,027 fish, with a replacement value of approximately \$270.92. Staffing costs incurred by the state during the fish kill investigation are \$1,780.17. The total for costs and damages incurred by the state for this incident is \$2,051.09.

8. The MCWL and Section 644.096, RSMo, authorize the state, or any political subdivision or agency, to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Sections 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the state to their condition as they existed before the violation, sustained by it because of any violation.

9. On October 13, 2016, the Department issued Referral Notice of Violation No. SW16433 to the City as a result of the SSO and fish kill. The letter informed the City that the case was referred to the Water Protection Program's Compliance and Enforcement Section for further enforcement action.

STATEMENT OF VIOLATIONS

The City, through its contracted agent, has violated the MCWL and its implementing regulations as follows:

10. Engaged in actions which caused water contaminants to reach Pea Ridge Creek, a water of the state, which reduced the quality of such waters below the Water Quality Standards

established by the Missouri Clean Water Commission in violation of Sections 644.051.1(1) & (2) and 644.076.1, RSMo, and 10 CSR 20-7.031; and

AGREEMENT

11. The Department and the City desire to amicably resolve all claims that may be brought against the City for violations alleged above in Statement of Violations.

12. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties.

13. Sections 644.076.1 and 644.079, RSMo, authorize the imposition of penalties for violations of the MCWL and establish monetary penalties of up to \$10,000 per day per violation. The City, in compromise and satisfaction of the Department's claims relating to the above-referenced violations and the City's good faith efforts of reporting the alleged non-compliance and measures instituted to remedy same, agrees, without admitting liability or fault, to pay an administrative penalty in the amount of \$4,000. The payment shall be in the form of a check made payable to "Greene County Treasurer, as custodian of the Greene County School Fund." The check in the amount of \$4,000 is due and payable upon execution of this AOC by the Respondent. The check and signed copy of the AOC shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

14. The City further agrees to reimburse investigative costs and alleged damages incurred by the state for this incident in the total amount of \$2,051.09. The payment shall be in the form of a check made payable to "State of Missouri" in the amount of \$2,051.09.

OTHER PROVISIONS

15. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification of 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. Consistent with 10 CSR 20-3.010(5), this AOC shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

16. Nothing in this AOC forgives the City 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 express 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, related to the incident of October 1, 2016. This AOC may not be modified orally.

17. 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.

18. 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 City for their records.

COST ANALYSIS FOR COMPLIANCE

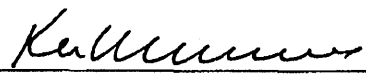
Pursuant to Section 644.145,(2)(c), the City hereby waives the requirement for the Department to develop a Cost Analysis for Compliance with respect to the activities required by AOC No. 2018-WPCB-1551.

NOTICE OF APPEAL RIGHTS

By signing this AOC, the City consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC, including the Cost Analysis for Compliance referenced herein, 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 28th day of June, 2018



The Honorable Ken McClure, Mayor
City of Springfield

Agreed to and Ordered on this 10th day of July, 2018



DEPARTMENT OF NATURAL RESOURCES
Chris Wieberg, Director
Water Protection Program

- c: Ms. Diane Huffman, U.S. Environmental Protection Agency, Region 7
- Ms. Cindy Davies, Director, Southwest Regional Office
- Operating Permits Section
- General Counsel's Office
- Accounting Program