

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
 **Melody Lake Water** )  
 **and Sewer LLC** ) **Order No. 2019-WPCB-1585**  
 )  
 **Proceeding under the** )  
 **Missouri Clean Water Law** )

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**ABATEMENT ORDER ON CONSENT**

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The issuing of this Abatement Order on Consent (AOC) No. 2019-WPCB-1585, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because Melody Lake Water and Sewer LLC (Respondent) has committed violations of 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 Respondent 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, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

## FINDINGS OF FACT

1. The Respondent is a Limited Liability Corporation registered and in good standing with the Missouri Secretary of State.

2. According to Franklin County GIS, the Respondent owns and operates a wastewater treatment facility (WWTF) that consists of a single cell lagoon. The WWTF is located in the NW 1/4, SW ¼, Section 27, Township 42 North, Range 03 West, in Franklin County. The WWTF has a design population equivalent of 600, a design flow of 60,000 gallons per day and an actual flow of 16,000 gallons per day. Treated effluent discharges through Outfall No. 001 of the WWTF to a tributary to Bourbeuse River (P), subject to the conditions and requirements of Missouri State Operating Permit No. MO-0091073 (Permit).

3. Bourbeuse River (P) and its tributaries are waters of the state as the term is defined by Section 644.016(27), RSMo.

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

5. The Permit required the Respondent to complete improvements and/or upgrades to the WWTF that will enable the effluent to achieve compliance with final permitted effluent limitations for Ammonia as Nitrogen on or before October 1, 2015.

6. The Permit requires the Respondent to collect representative samples of the effluent discharged from Outfall No. 001 and analyze the sample for the contaminants listed in Part "A" every month. The Permit requires the effluent to comply with the limitations contained in Part "A" of the Permit and requires the Respondent to submit the results of the analysis to the Department on monthly Discharge Monitoring Reports (DMRs) by the 28<sup>th</sup> day of the month following the reporting period.



7. Effluent discharged from Outfall No. 001 of the WWTF failed to comply with effluent limitations contained in the Permit. See Exhibit A of this AOC below for list of effluent violations.

8. On May 11, 2017, in preparation for a compliance inspection of the WWTF, Department staff reviewed DMRs submitted to the Department by the Respondent and found that the effluent discharged from Outfall No. 001 of the WWTF failed to comply with effluent limitations contained in the Permit. See Exhibit A of this AOC below for list of effluent violations. During the compliance inspection, staff observed that the lagoon berms had not been maintained at the proper 3:1 slope and that the ultraviolet system was not in operation and only one of the bulbs was operable. Based on the violations documented during the May 11, 2017, inspection, the Department issued Referral Notice of Violation No. SL170160 to the Respondent on June 14, 2017.

### **STATEMENT OF VIOLATIONS**

The Respondent has violated the MCWL and its implementing regulations as follows:

9. Violated the effluent limitations contained in Part "A" of the Permit, in violation of Sections 644.051.1(3) and 644.076.1, RSMo; and

10. Caused pollution to Bourbeuse River, waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

### **AGREEMENT**

11. The Department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent 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. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of the Respondent under this AOC.

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 penalty contained in this AOC was calculated using the Penalty Assessment Protocol described in 10 CSR 20-3.010.

14. The Respondent, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay an administrative penalty in the amount of \$4,800. The payment shall be in the form of a check made payable to "Franklin County Treasurer, as custodian of the Franklin County School Fund." The check in the amount of \$4,800 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

15. In the period of time from the effective date of this AOC until the new or upgraded WWTF is completed, the Respondent agrees to make a reasonable good faith effort to operate the WWTFs in compliance with the Permits, and the MCWL, and its implementing regulations.

16. Within 30 days of the effective date of this AOC, the Respondent is ordered and agrees to retain a professional engineer registered in the State of Missouri to conduct a comprehensive evaluation of all processes and activities conducted on site to determine the site's



applicability for the Permit. The engineer shall develop a Facility Plan in accordance with 10 CSR 20-8.110, which takes the findings of the comprehensive evaluation into consideration, for review and approval by the Department.

17. Within 90 days of the effective date of this AOC, the Respondent is ordered and agrees to submit to the Department for review and approval, the Facility Plan, which includes a comprehensive construction improvements schedule.

18. Upon the Department's approval of the Facility Plan, the Respondent is ordered and agrees to implement the construction improvements schedule included in the Facility Plan and incorporated herein as an enforceable condition of this AOC.

19. Upon the Department's approval of the Facility Plan, the Respondent is ordered and agrees to consult with the Department's Engineering Section staff and comply with all applicable application, permit, and permit fee requirements as set forth in 10 CSR 20-6 Permit and 10 CSR 20-8 Minimum Design Standards.

20. Within 60 days of completing construction of the upgrades specified in the construction improvements schedule, the Respondent is ordered and agrees to submit to the Department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer registered in the State of Missouri certifying that the project is complete and operable in accordance with Department approved plans and specifications.

21. Within 90 days of completing construction of the improvements, the Respondent is ordered and agrees to achieve compliance with the effective effluent limitations contained in the Permit.

22. The Respondent agrees to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

**SUBMISSIONS**

23. All other documentation submitted to the Department for compliance with this AOC shall be submitted within the timeframes specified to:

Mr. Robert Besalke  
Department of Natural Resources  
Water Protection Program  
Compliance and Enforcement Section  
P.O. Box 176  
Jefferson City, MO 65102-0176

**OTHER PROVISIONS**

24. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent shall notify the Department by telephone or electronic mail: i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the Department, the Respondent shall submit to the Department, for review and approval, a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the Respondent's right to request an extension and may be grounds for the Department to deny the Respondent an extension.

25. Should the Respondent fail to meet the terms of this AOC, including the deadlines set out in Paragraphs 15 through 22, the Respondent shall be subject to pay stipulated penalties in the following amount:

| <u>Days of Violation</u> | <u>Amount of Penalty</u> |
|--------------------------|--------------------------|
| 1 to 30 days             | \$100 per day            |
| 31 to 90 days            | \$250 per day            |
| 91 days and above        | \$500 per day            |



Stipulated penalties will be paid in the form of a check made payable to "Franklin County Treasurer, as custodian of the Franklin County School Fund." Any such stipulated penalty shall be paid within ten days of demand by the Department and shall be delivered to:

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

26. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification or 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.

27. Nothing in this AOC forgives the Respondent 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. This AOC may not be modified orally.

28. 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.



29. 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 Respondent for their records.

**NOTICE OF APPEAL RIGHTS**


30. By signing this AOC, the Respondent 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 9<sup>th</sup> day of Sept, 2019

  
\_\_\_\_\_  
Melody Lake Water and Sewer LLC  
Mr. Robert Higgins, President

Agreed to and Ordered on this 25<sup>th</sup> day of October, 2019

  
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DEPARTMENT OF NATURAL RESOURCES  
Chris Wieberg, Director  
Water Protection Program

c: Ms. Dorothy Franklin, Director, St. Louis Regional Office  
General Counsel's Office  
Accounting Program

Exhibit A:

|            | <i>Parameter</i> | <i>Units</i> | <i>Reported</i> | <i>Daily Max.</i> | <i>Weekly Avg.</i> | <i>Monthly Avg.</i> |
|------------|------------------|--------------|-----------------|-------------------|--------------------|---------------------|
| 10/31/2018 | BOD              | mg/L         | 51.6            |                   | 60                 | 40                  |
| 09/30/2018 | BOD              | mg/L         | 52.8            |                   | 60                 | 40                  |
| 02/28/2018 | BOD              | mg/L         | 110.0           |                   | 60                 | 40                  |
| 02/28/2017 | BOD              | mg/L         | 41.1            |                   | 60                 | 40                  |
| 02/29/2016 | BOD              | mg/L         | 62.4            |                   | 60                 | 40                  |
|            |                  |              |                 |                   |                    |                     |
|            |                  |              |                 |                   |                    |                     |
| 10/31/2018 | E. coli          | #/100mL      | 2419.6          | 630               |                    | 126                 |
| 09/30/2018 | E. coli          | #/100mL      | 1986.3          | 630               |                    | 126                 |
| 06/30/2018 | E. coli          | #/100mL      | 721.5           | 630               |                    | 126                 |
| 10/31/2017 | E. coli          | #/100mL      | 2419.6          | 630               |                    | 126                 |
| 08/31/2017 | E. coli          | #/100mL      | 2419.6          | 630               |                    | 126                 |
| 07/31/2017 | E. coli          | #/100mL      | 2419.6          | 630               |                    | 126                 |
| 05/31/2017 | E. coli          | #/100mL      | 344.8           | 630               |                    | 126                 |
| 09/30/2016 | E. coli          | #/100mL      | 1872            | 630               |                    | 126                 |
| 08/31/2016 | E. coli          | #/100mL      | 2419.6          | 630               |                    | 126                 |
|            |                  |              |                 |                   |                    |                     |
|            |                  |              |                 |                   |                    |                     |
| 12/31/2018 | Ammonia          | mg/L         | 18.0            | 10.3              |                    | 2.7                 |
| 11/30/2018 | Ammonia          | mg/L         | 6.6             | 10.3              |                    | 2.7                 |
| 09/30/2018 | Ammonia          | mg/L         | 2.2             | 4.5               |                    | 1.3                 |
| 06/30/2018 | Ammonia          | mg/L         | 3.0             | 4.5               |                    | 1.3                 |
| 05/31/2018 | Ammonia          | mg/L         | 4.9             | 4.5               |                    | 1.3                 |
| 04/30/2018 | Ammonia          | mg/L         | 4.0             | 4.5               |                    | 1.3                 |
| 01/31/2018 | Ammonia          | mg/L         | 5.3             | 10.3              |                    | 2.7                 |
| 12/31/2017 | Ammonia          | mg/L         | 3.2             | 10.3              |                    | 2.7                 |
| 11/30/2017 | Ammonia          | mg/L         | 3.3             | 10.3              |                    | 2.7                 |
| 08/31/2017 | Ammonia          | mg/L         | 2.0             | 4.5               |                    | 1.3                 |
| 07/31/2017 | Ammonia          | mg/L         | 3.20            | 4.5               |                    | 1.3                 |
| 06/30/2017 | Ammonia          | mg/L         | 3.00            | 4.5               |                    | 1.3                 |
| 05/31/2017 | Ammonia          | mg/L         | 4.90            | 4.5               |                    | 1.3                 |
| 04/30/2017 | Ammonia          | mg/L         | 11.00           | 4.5               |                    | 1.3                 |
| 03/31/2017 | Ammonia          | mg/L         | 3.0             | 10.3              |                    | 2.7                 |
| 01/31/2017 | Ammonia          | mg/L         | 3.6             | 10.3              |                    | 2.7                 |
| 12/31/2016 | Ammonia          | mg/L         | 3.0             | 10.3              |                    | 2.7                 |
| 11/30/2016 | Ammonia          | mg/L         | 4.2             | 10.3              |                    | 2.7                 |
| 10/31/2016 | Ammonia          | mg/L         | 3.1             | 10.3              |                    | 2.7                 |
| 09/30/2016 | Ammonia          | mg/L         | 4.4             | 4.5               |                    | 1.3                 |
| 08/31/2016 | Ammonia          | mg/L         | 2.3             | 4.5               |                    | 1.3                 |
| 07/31/2016 | Ammonia          | mg/L         | 1.4             | 4.5               |                    | 1.3                 |
| 04/30/2016 | Ammonia          | mg/L         | 4.8             | 4.5               |                    | 1.3                 |

|            |         |      |       |      |    |     |
|------------|---------|------|-------|------|----|-----|
| 03/31/2016 | Ammonia | mg/L | 5.1   | 10.3 |    | 2.7 |
| 01/31/2016 | Ammonia | mg/L | 8.6   | 10.3 |    | 2.7 |
|            |         |      |       |      |    |     |
|            |         |      |       |      |    |     |
| 03/31/2018 | TSS     | mg/L | 53.6  |      | 70 | 45  |
| 02/28/2018 | TSS     | mg/L | 68.4  |      | 70 | 45  |
| 01/31/2018 | TSS     | mg/L | 49    |      | 70 | 45  |
| 11/30/2017 | TSS     | mg/L | 60.0  |      | 70 | 45  |
| 02/28/2017 | TSS     | mg/L | 67.4  |      | 70 | 45  |
| 01/31/2017 | TSS     | mg/L | 57    |      | 70 | 45  |
| 02/29/2016 | TSS     | mg/L | 128.0 |      | 70 | 45  |