

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI**

RECEIVED
JUN 28 2013
DAS ACCOUNTING

IN THE MATTER OF:

ARAMARK Management Services Limited)
Partnership d/b/a ARAMARK Education (K-12))
Harrisonville Memorial Stadium)
Unauthorized Discharge)

No. 2013-WPCB-1225

SERVE:

ARAMARK Management Services Limited)
Partnership d/b/a ARAMARK Education (K-12))

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) number 2013-WPCB-1225, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because the Department determined that ARAMARK Management Services Limited Partnership d/b/a ARAMARK Education (K-12) (ARAMARK) allegedly violated the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the MCWL Section 644.076.1, RSMo. Litigation may occur without further administrative 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 ARAMARK of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. ARAMARK is a professional management services company that provides facility management services to schools and other facilities. Since 1985,

ARAMARK has provided facility management services to the Harrisonville R-9 School District (District) located in Harrisonville, Cass County, Missouri.

- B. ARAMARK is a limited partnership registered and active with the Missouri Secretary of State.
- C. The District owns and operates Harrisonville Memorial Stadium, which is located on 19 acres of land at 500 Polar Lane in Harrisonville, Missouri. The stadium is located in the watershed of a tributary to Muddy Creek in Section 4, Township 44, Range 31, in Cass County, Missouri. Muddy Creek is a Class C stream located approximately 0.93 miles (1.5 kilometers) downstream from the stadium's discharge point into the tributary.
- D. Between May 7 and May 14, 2012, ARAMARK used approximately 30 gallons of Acti-Brite, an acid-based cleaner composed of approximately 15% hydrofluoric acid and 10% phosphoric acid, to clean the stadium bleachers.
- E. Acti-Brite is an acid-based, high-foaming outdoor condenser coil cleaner and brightener that removes oxidation and brightens aluminum. According to the Material Safety Data Sheet, Acti-Brite is harmful to aquatic life in very low concentrations.
- F. Muddy Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- G. Acti-Brite and process wastewater are water contaminants as the term is defined in Section 644.016(24), RSMo.
- H. On May 15, 2012, the Missouri Department of Conservation (MDC) received an environmental concern reporting that there were dead fish in the creek and grey slurry coming out of a culvert into the creek at the intersection of South Street and Eastwood Street in Harrisonville. On May 16, 2012, MDC staff conducted an investigation at the intersection, and observed grey slurry and dead fish in the creek below the culvert. MDC staff did not observe any dead fish in the creek above the culvert, but estimated that there were approximately 423 dead fish in the creek between the culvert and a point 100 yards downstream of the culvert. MDC staff met with Mr. Anthony Guilliams, ARAMARK's Front Line Manager at the District, and learned that the metal stadium bleachers had recently been cleaned with Acti-Brite. MDC staff observed that a grey substance had been washed into the stormwater drainage for the stadium. Following their investigation, MDC staff reported the fishkill to the Department.
- I. On May 17, 2012, Department staff conducted an investigation at the reported fishkill site. During the investigation, Department staff observed dead fish in the creek, and a light-colored, cloudy precipitate suspended in the water and on the surface of rocks around a culvert. Department staff observed that the culvert was located approximately 0.20 miles (1,048 feet or 349 yards) south of the stadium, and noted that stormwater from the stadium discharges from this culvert to the

tributary to Muddy Creek. At the stadium, Department staff observed a powdery white residue on the concrete sidewalk in the path that stormwater from the bleachers travels. During the investigation, Department staff tested water samples from the culvert and the receiving stream immediately above and below the culvert, as well as diluted residue from beneath and around the stadium bleachers, and determined that the samples had a neutral pH at each location. Department staff met with Mr. Jamie Hall, ARAMARK Associate District Manager, and learned that an ARAMARK cleaning crew had recently completed cleaning the stadium bleachers with Acti-Brite and water in a 10:1 ratio.

- J. On May 17, 2012, the Department issued Notice of Violation (NOV) number KCR20120601110461452 to ARAMARK for operating a water contaminant source which discharged to waters of the state without a Missouri State Operating Permit (MSOP) and causing pollution to waters of the state. On August 21, 2012, the Department sent an inspection report to ARAMARK documenting the violations, and informing ARAMARK that the matter was being referred to the Water Pollution Control Program for enforcement action.
- K. On September 10, 2012, the Department received a response on behalf of ARAMARK to NOV number KCR20120601110461452. The letter stated that the bleacher cleaning was not the cause of the fishkill, given that all water samples exhibited a neutral pH, indicating that it was fully diluted at the point of discharge, and that there were several other potential causes. The letter also stated that ARAMARK routinely provides environmental training and compliance tools to its employees, and that following the event, even though ARAMARK did not believe its actions were the cause of the fishkill, ARAMARK planned to provide formal re-training to its employees at the District about stormwater regulations and proper management practices.
- L. As a result of the above investigation, the Department incurred costs and expenses for staff time in the amount of \$887.85. In addition, MDC incurred similar costs and expenses in the amount of \$483.77, which includes the value of aquatic life killed in the amount of \$67.89.
- M. Section 644.096, RSMo, authorizes 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 Section 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 the State because of the violation.
- N. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein, which ARAMARK neither admits nor denies, are as follows:

1. Operated, used, or maintained a water contaminant source – process wastewater containing Acti-Brite – which discharged to a tributary to Muddy Creek, waters of the state, without a MSOP, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).
2. Caused pollution of a tributary to Muddy Creek, waters of the state, or placed or caused or permitted to be placed a water contaminant in a location where it is reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.
3. Discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards general criteria established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031.

IV. AGREEMENT

- A. The Department and ARAMARK desire to amicably resolve all claims that may be brought against ARAMARK for violations alleged above in Section III, Citations and Conclusions of Law, without ARAMARK admitting to the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, and lessees, including the officers, agents, servants, 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 ARAMARK under this AOC.
- C. ARAMARK in compromise and satisfaction of the Department’s claims relating to the above-referenced alleged violations agrees, without admitting liability or fault, to pay a civil penalty in the amount of three thousand five hundred dollars and no cents (\$3,500.00). The payment shall be in the form of a certified check or cashier’s check made payable to “Cass County Treasurer, as custodian of the Cass County School Fund.” The check in the amount of three thousand five hundred dollars and no cents (\$3,500.00) is due and payable within ten (10) business days after execution of this AOC by ARAMARK. The check and signed copies of the AOC shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176
- D. ARAMARK also agrees to pay the state’s investigative costs, damages, and the value of the aquatic life killed, in the amount of one thousand three hundred seventy-one dollars and sixty-two cents (\$1,371.62) in the form of a certified

check or cashier's check made payable to the "State of Missouri." The check in the amount of one thousand three hundred seventy-one dollars and sixty-two cents (\$1,371.62) is due and payable within ten (10) business days after execution of this AOC by ARAMARK. The check shall be delivered to:

Accounting Program
 Missouri Department of Natural Resources
 P.O. Box 477
 Jefferson City, MO 65102-0176

- E. ARAMARK agrees to obtain any and all required permits from the Department and use proper management practices so as to prevent future unauthorized discharges to waters of the state.
- F. ARAMARK agrees to verbally notify the appropriate Department office listed below within twenty-four (24) hours from the time ARAMARK becomes aware of any unpermitted discharges as a result of ARAMARK's business activities in Missouri, and submit a written response to the appropriate Department office listed below within five (5) days from the time ARAMARK becomes aware of the discharge explaining the corrective actions taken to resolve the discharge and prevent future discharges.

Regional Office	Phone Number	Address
Kansas City	816-251-0700	500 NE Colbern Rd, Lee's Summit, MO 64086
Northeast	660-385-8000	1709 Prospect Drive, Macon, MO 63552
St. Louis	314-416-2960	7545 S. Lindbergh, Ste 210, St. Louis, MO 63125
Southeast	573-840-9750	2155 N. Westwood Blvd, Poplar Bluff, MO 63901
Southwest	417-891-4300	2040 W. Woodland, Springfield, MO 65807
24-hour Spill Line (Weekends, holidays, after 5 p.m.)	573-634-2436	

- E. Nothing in this AOC forgives ARAMARK 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 noncompliance 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 or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

- F. 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.
- G. The effective date of the AOC shall be the date the Department signs the AOC after it has been signed by ARAMARK. The Department shall send a fully executed copy of this AOC to ARAMARK for its records.
- H. ARAMARK shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC, ARAMARK consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC 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.

VI. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

Ms. Corinne Rosania
Compliance and Enforcement Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 11th day of July, 2013.



John Madras, Director
Water Protection Program
Missouri Department of Natural Resources

Agreed to and Ordered this 14th day of June, 2013.

ARAMARK Management Services Limited Partnership
d/b/a ARAMARK Education K-12
By its general partner, ARAMARK SMMS LLC



Jeff Gilliam, Authorized Signatory

Copies of the foregoing served by certified mail to:

Mr. Peter J. Fontaine CERTIFIED MAIL:
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103

c: Ms. Diane Huffman
Chief, NPDES and Facilities Management Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII
11201 Renner Blvd
Lenexa, KS 66219

Ms. Andrea Collier, Director
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500 NE Colbern Road
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