

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI

IN THE MATTER OF:)
)
The City of Gilman City)
Wastewater Treatment Lagoon)
) No. 2014-WPCB-1267
SERVE:)
)
The Honorable Meri Ann Troyer, Mayor)
Gilman City)

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) number 2014-WPCB-1267, by the Missouri Department of Natural Resources, is a formal administrative action by the State of Missouri and is being issued because the wastewater treatment lagoon serving the city of Gilman City is in violation of 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 the city 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. Gilman City is a fourth class municipality with a population of approximately 372 people. Wastewater generated by the residents is treated by a three (3) cell lagoon located in the SE 1/4, NE1/4, Section 30, Township 62 North, Range 26 West, of Harrison County, Missouri. The lagoon has a design population equivalent of 850, a design flow of 85,000 gallons per day, and an actual flow of 18,000 gallons per day. Effluent from the lagoon discharges through outfall #001, to a tributary to Tombstone Creek pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) number M0-0098663.

- B. Tombstone Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- C. Domestic Wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- D. On August 1, 2013, the Department renewed the city's MSOP. The MSOP requires the city to sample the effluent discharged from outfall #001 and chemically analyze the effluent sample for the water contaminants listed in part "A" every quarter. The MSOP also requires the effluent to comply with the limitations contained in part "A" and requires the results of the analysis to be submitted to the Department on quarterly Discharge Monitoring Reports (DMRs) by the 28th day of the month following the reporting period.
- E. The MSOP includes interim and final effluent limitations for Ammonia as Nitrogen, and Escherichia (E.) coli, and a schedule of compliance (SOC) with two (2) separate timeframes to complete improvements or upgrades that will enable the effluent to comply with the final limitations for E. coli by January 1, 2014, and ammonia by August 1, 2019.
- F. On August 14, 2013, the city filed a Complaint for Administrative Review pursuant to 621.250 and 644.051 RSMo, appealing MSOP number M0-0098663.
- G. On September 20, 2013, representatives for the city informed Department staff that it would not be able to meet either the December 31, 2013, deadline for completing improvements necessary to comply with final effluent limitations for E. coli.
- H. 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

The Department alleges the following violations of the MCWL and its implementing regulations:

- A. Failure to improve wastewater treatment lagoon as required in part "B," Standard Conditions, and part "D," Schedule of Compliance, of the MSOP, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A).

IV. AGREEMENT

- A. The Department and the city desire to amicably resolve all claims that may be brought against the city for the violation alleged above in Section III, Citations and Conclusions of Law, without the city 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, 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 city under this AOC.

C. In the period of time from the effective date of this AOC until the new facility or improvements to the existing lagoon are completed, the city shall operate and maintain the existing lagoon at all times in compliance with the following interim effluent limitations:

- 1) Biological Oxygen Demand 65 mg/L weekly average, and 45 mg/L monthly average
- 2) Total suspended Solids 120 mg/L weekly average, and 80 mg/L monthly average
- 3) Oil and Grease 15mg/L daily maximum, 10 mg/L monthly average

All units or components of the existing lagoon shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the lagoon.

D. Within fourteen (14) days of the effective date of this AOC, the Department will revise the fact sheet for MSOP number MO-0098663 to include a statement that reads: "The Department and City of Gilman City have entered into an AOC, which includes a modified schedule of compliance for ammonia and E. coli effluent limitations."

E. Within ten (10) days of the Department's issuance of MSOP number MO-0098663 that includes the statement in paragraph D above, the city agrees to file a motion with the Administrative Hearing Commission requesting dismissal of appeal number 13-1477 CWC.

F. On or before March 1, 2014, the city shall submit a Facility Plan to the Department for review and approval. The plan shall be signed and sealed by a professional engineer licensed to practice in the State of Missouri and recommend improvements or upgrades that will enable the effluent to comply with all final effluent limitations contained in the MSOP. Although not required at this time, the plan may also include alternatives that will result in compliance with final effluent limitations for ammonia as nitrogen based on the Environmental Protection Agency's April 2013 Final Aquatic Life Ambient Water Quality Criteria for Ammonia- Freshwater. The plan shall include a schedule of completion dates for major project milestones, including but not limited to, placement of a bond issue on a ballot, to be presented for public vote, submittal of a construction permit application, and completion of construction, on or before

December 31, 2019. The facility plan shall also contain an evaluation of interim operational changes, that will be implemented until the new system is operational, to reduce the E. coli levels in the effluent or discharges from the lagoon during the recreational season from April 1 to October 31. The city shall implement the changes as approved by the Department, which shall be enforceable as a condition of compliance of this AOC.

- G. Within ninety (90) days of completing construction of the improvements, the city shall achieve compliance with the final effluent limitations contained in part "A" of the MSOP and submit to the Department a Statement of Work Complete 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, and a complete application with the applicable fee to modify the MSOP.
- H. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the city 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 (5) days of notifying the Department, the city 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, based upon reasonable justification. Failure to submit a written notice to the Department may constitute a waiver of the city's right to request an extension and may be grounds for the Department to deny the city an extension.
- I. Should the city fail to meet the deadlines for completion of construction set out in paragraphs D through G, the city shall be subject to pay stipulated penalties in the following amount:

Days of Violation	Amount of Penalty
1 to 30 days	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Harrison County Treasurer, as custodian of the Harrison County School Fund." Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

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

- J. 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 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 within are 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.
- K. 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.
- L. 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 its records.
- M. State law requires compliance with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. FINDING OF AFFORDABILITY

Pursuant to Section 644.145, the Affordability Finding, which addresses the obligations included within this Order through December 31, 2019, based upon the cost estimate of \$1,638,796 to \$2,677,815 through completion of corrective actions is attached hereto as Exhibit 1. This Affordability Finding does not address future improvements, including those that may be required under Section IV Paragraph C of this AOC, that may be necessary to comply with the MCWL or its implementing regulations. This AOC requires the city to complete improvements to the lagoon in accordance with a Department approved facility plan, designs, and specifications. If the purchase of new parts, equipment or repair of the lagoon is necessary pursuant to Section IV Paragraph C and impacts the City's ability make improvements to the existing lagoon to meet final effluent limitations, the Department shall conduct a revised Affordability Determination accordingly. The city agrees to provide such additional information requested by the Department as is reasonably necessary to assist in developing any required Affordability Finding in the future.

VI. RIGHT OF APPEAL

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 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, or 10 CSR 20-6.020(5).

VII. CORRESPONDENCE AND DOCUMENTATION

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

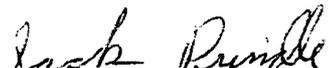
Ms. Kristi Savage-Clarke
Compliance and Enforcement Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 21st day of February, 2014



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

Agreed to and Ordered this _____ day of _____, 20____



The Honorable JACK Prindle, Mayor Pro Tem
Gilman City, MO

Copies of the foregoing served by certified mail to:

The Honorable Meri Ann Troyer
Mayor, Gilman City
429 Main Street
Gilman City, MO 64642

c: Ms. Diane Huffman, Environmental Protection Agency
Mr. Chris Wieberg, Chief, Operating Permits Section
Ms. Andrea Collier, Director, Kansas City Regional Office
Ms. Janet Pointer, Accounting Specialist, Accounting Program
Missouri Clean Water Commission