

UNASSIGNED

MAR 11 2014

WATER PROTECTION PROGRAM

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

<b>IN THE MATTER OF:</b>	)	
	)	
	)	
Moberly LDS Church	)	
Wastewater Treatment Facility	)	
	)	No. 2014-WPCB-1273
<b>SERVE:</b>	)	
	)	
Church of Jesus Christ	)	
of Latter Day Saints	)	
	)	

**ABATEMENT ORDER ON CONSENT**

**I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuing of this Abatement Order on Consent (AOC) number 2014-WPCB-1273, by the Missouri Department of Natural Resources, is a formal administrative action by the State of Missouri and is being issued because the Moberly LDS Church wastewater treatment facility 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 Moberly LDS Church 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. The Church of Jesus Christ of Latter Day Saints (Church) owns and operates the Moberly LDS Church wastewater treatment facility (facility) located in the NE ¼, NW ¼, Section 29, Township 54 North, Range 13 West, of Randolph County, Missouri. The facility consists of a septic tank with sand filter. The facility has a design population equivalent of 15, a designed flow of 1,500 gallons per day, and an actual flow of 248 gallons per day. Effluent discharges from Outfall No. 001

to a tributary to the Elk Fork Salt River pursuant the conditions and requirements of Missouri State Operating Permit (MSOP) number MO-0106551.

- B. Elk Fork Salt River 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 January 26, 2007, the Department issued the MSOP to the Church which expired by its own terms on January 25, 2012. The MSOP requires the Church to sample the effluent discharged from outfall No. 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 28<sup>th</sup> day of the month following the reporting period.
- E. The MSOP includes interim and final effluent limitations for Flow, Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), pH, Ammonia as Nitrogen, Fecal Coliform, and Temperature, and a schedule of compliance (SOC) for the Church to complete improvements to the facility that would enable the effluent to comply with the final limitations by January 24, 2012.
- F. A quarterly DMR submitted to the Department document that the effluent discharged from the Church's facility failed to comply with the applicable permitted effluent limitations for TSS during the quarter of October, November, and December 2012.
- G. February 21, 2012, Department staff conducted an inspection of the facility and found the following unsatisfactory conditions: failure to mark the outfall. A file review of the facility's records indicated a failure to submit timely DMRs, failure to maintain sludge monitoring reports, failure to apply for MSOP renewal at least one hundred and eighty (180) days before expiration, and failure to upgrade facility as required in the SOC of the MSOP.
- H. On April 6, 2012, the Department issued Notice of Violation (NOV) number NER2012031611364176 to the Church for violations of the MCWL found during the February 21, 2012 inspection
- I. On September 26, 2012, Department staff conducted an inspection of the facility and found the following unsatisfactory conditions: failure to mark the outfall, and failure to provide an outfall so that a sample of the effluent can be obtained. A file review of the facility's records indicated a failure to submit timely DMRs, failed to install disinfection as required in the SOC of the MSOP, failure to apply for MSOP renewal at least one hundred and eighty (180) days before expiration, and failure to maintain sludge monitoring and records.

- J. On October 5, 2012, the Department issued NOV number NER2012100109573582 to the Church for violations of the MCWL found during the September 26, 2012 inspection.
- K. On December 24, 2012, the Department received a renewal application for the MSOP.
- L. On October 3, 2013, the Department issued the owner a construction permit for installation of a chlorination and dechlorination disinfection system.
- M. 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 and found to have been committed by the Church at the facility are as follows:

1. Failed to upgrade the facility as required in part "B" Standard Conditions, and part "D", Schedule of Compliance of MSOP #MO-0108995, in violation of Sections 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A).
2. Failed to apply for renewal of the MSOP at least one hundred eighty (180) days before expiration of MSOP number MO-0124681, in violation of Sections 644.051.9 and 64.076.1, RSMo, and 10 CSR 20-6.010(5)(C).
3. Failed to submit timely Discharge Monitoring Reports as required in part "A" of MSOP #MO-0106551, in violation of Sections 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1.
4. Failed to submit sludge monitoring reports as required by the Standard Conditions Part III of MSOP #MO-0106551, in violation of Section 644.076.1, RSMo.

### IV. AGREEMENT

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

- C. The Church in compromise and satisfaction of the Department claims relating to the above-referenced violations agrees, without admitting liability or fault, to pay a civil penalty in the amount of eight thousand dollars and no cents (\$8,000.00). The Department and the Church further agree that eight thousand dollars and no cents (\$8,000.00) shall be suspended as described in paragraph D below. The 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. The suspended penalty described in paragraph C of eight thousand dollars and no cents (\$8,000.00) shall be suspended for a period of two (2) years from the execution of this AOC upon the condition that the Church does not violate the terms of the AOC. Upon determination that the Church has failed to meet the terms of this AOC, including the requirements of paragraphs E through I, the Department shall send a written demand for the suspended penalty to the Church. The Church shall have fifteen (15) days from receipt of the written demand to submit the suspended penalty to the address listed in paragraph C.
- E. In the period of time from the effective date of this AOC until the new or upgraded facility is completed, the Church shall operate and maintain the existing facility at all times in compliance with the conditions and requirements of MSOP number MO-0106551. All units or components of the existing facility shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the facility.
- F. On or before March 31, 2014, the Church shall complete construction of the improvements as approved by the Department, and achieve compliance with the final effluent limitations.
- G. Within fifteen (15) days of completing construction, the Church shall 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 Church 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 Church 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 Church's right to

request an extension and may be grounds for the Department to deny the Church an extension.

- I. Should the Church fail to meet the terms of this AOC, including the deadlines for completion of construction set out in paragraphs D through J, the Church 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	\$100.00 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 "Randolph County Treasurer, as custodian of the Randolph 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 65102-0176

- J. Nothing in this AOC forgives the Church 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.
- 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. Upon full payment of the above-mentioned penalty and full compliance with all provisions of this AOC, the Department agrees to refrain from initiating or asserting against the Church any civil or administrative suit claiming violations of the MCWL, Chapter 644, RSMo, listed in Notice of Violation nos. 19072 SE and 19066 SE.
- M. 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 Church for its records.
- N. The Church 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, the Church 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

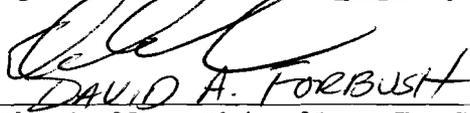
Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

Mr. John Corley  
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 12<sup>th</sup> day of March, 2014

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

Agreed to and Ordered this 26 day of FEBRUARY, 2014

  
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DAVID A. FORBUSH  
Church of Jesus Christ of Latter Day Saints  
Moberly LDS Church Wastewater Treatment Facility

Copies of the foregoing served by certified mail to:

Ms. Heidi M. Weber  
Facility Manager  
Moberly LDS Church  
50 East Temple St.  
Salt Lake City, UT 84150

CERTIFIED MAIL:

Mr. Gary Moegling  
Moberly LDS Church  
1049 County Rd. 2310  
Moberly, MO 65270

CERTIFIED MAIL:

- c: Ms. Diane Huffman, Environmental Protection Agency  
Mr. Chris Wieberg, Chief, Operating Permits Section  
Ms. Irene Crawford, Director, Northeast Regional Office  
Missouri Clean Water Commission  
Mr. Max Nall, M2 Architecture Studio, 1232 Washington Avenue, Suite 230  
St. Louis, MO 63103