

judicial enforcement action to recover civil penalties for any, including future, violations of the Missouri Clean Water Law and the violations cited in this Abatement Order on Consent No. 997, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

- A. The City is a fourth class municipality with a population of approximately 1,992. As part of the services it provides its citizens, the City owns and operates a wastewater treatment facility, (WWTF), located in the SE $\frac{1}{4}$, SE $\frac{1}{4}$, Sec. 34, T29N, R3E, Wayne County, Missouri. The City's WWTF consists of a four cell lagoon with three aerated cells and a final polishing cell. The WWTF has design flow of 350,000 gallons per day (gpd) and an actual flow of 250,000 gpd. The City also owns and maintains sewer lines throughout the City that collect and carry wastewater from residential, commercial and industrial sources to its WWTF.
- B. The Department issued Missouri State Operating Permit (MSOP) No. MO-0047341 to the City with an effective date of July 3, 2008. The July 3, 2008, MSOP No. MO-0047341 contains specific effluent limitations for outfall's # 001 and # 002. Effluent from the City's WWTF discharges from outfall # 001 to McKenzie Creek, waters of the state, pursuant to the requirements of MSOP No. MO-0047341. Effluent from Windsor Foods pretreatment system discharges process wastewater from outfall # 002 to the City's wastewater

collection treatment system pursuant to the requirements of MSOP No. MO-0047341.

- C. McKenzie Creek is a Class (P) stream and is listed on the Department's 2004/2006 303 (d) list of impaired waters due to low dissolved oxygen. The 303 (d) list also identifies the City's WWTF as the source for the impairment.
- D. MSOP No. MO-0047341 requires the City to analyze its effluent from outfalls # 001 and #002, each month for the parameters identified in Part "A" and submit the results to the Department in its monthly Discharge Monitoring Reports (DMRs). DMRs are to be received by the Department on or before the 28th day of the following month.
- E. MSOP No. MO-0047341 Part "A" contains specific effluent limitations for outfall # 001, including a monthly average limitation of 45 milligrams per liter (mg/L) for Biochemical Oxygen Demand (BOD) and a monthly average of 70 mg/L for Total Suspended Solids (TSS). MSOP No. MO-0047341 also contains specific effluent limitations for outfall # 002, including a daily maximum of 360 mg/L and 300 pounds/day for BOD; 150 mg/L and 125 pounds/day for TSS; and 54 mg/L and 45 pounds/day for Oil and Grease.
- F. MSOP No. MO-0047341 contains interim effluent limitations for outfall # 001 that are effective from July 3, 2008 to July 3, 2011 and final effluent limitations for outfall # 001, which become effective July 4, 2011. The final effluent limitations will require effluent that is discharged from outfall # 001 to comply with monthly average limitations of 10 mg/L for BOD and 30 mg/L for TSS.

The final effluent limitations will also require effluent that is discharged from outfall # 001 to comply with new effluent limitations for Ammonia as Nitrogen, Oil and Grease, Fecal Coliform, Chloride, and if applicable Total Residual Chlorine.

- G. Based upon DMRs submitted to the Department, effluent from the City's WWTF failed to comply with its average monthly permitted effluent limitation for BOD during the months of April, May, September, October, November, and December 2006; February, June, July, August, September, October, and November, and December 2007; February and May 2008. Effluent from the City's WWTF also failed to comply with its average monthly permitted effluent limitation for TSS during months of June, July, August, and September 2006; and June, July, August, September, October, and November 2007.
- H. On October 25, 2007, Department staff conducted an inspection of the City's WWTF. During this inspection Department staff observed that the final cell of the lagoon was covered entirely by duckweed, at least two (2) aerators in the third (3) cell were not working properly, and that outfall 001 was not clearly marked in the field. Staff also observed that the receiving stream below outfall 001 was green in color and that the streambed was covered with a thick mat of filamentous algae. As part of this inspection staff reviewed the City's DMRs and found that effluent from the City's WWTF chronically failed to comply with permitted effluent limitations for BOD and TSS. Due to the violations

documented during this inspection the Department issued the City Notice of Violation No. 18407 SE.

III. CITATIONS AND CONCLUSIONS OF LAW

The Department finds that the following violations of the Missouri Clean Water Law have occurred:

- A. Failure to comply with the permitted effluent limitations contained in Part “A” of MSOP MO-0047341 in violation of Sections 644.051.1(3) and 644.076.1, RSMo;
- B. Causing pollution of McKenzie 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;
- C. Discharging water contaminants into waters 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(2) and 644.076.1, RSMo, and 10 CSR 20-7.031; and
- D. Failure to operate and maintain facilities to comply with the Missouri Clean Water Law and applicable permit conditions in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

IV. AGREEMENT

- A. The Department, City, and the Attorney General desire to amicably resolve all claims that might be brought against the City and its staff for the violations alleged above in Section III, Citations and Conclusions of Law, without City admitting the

validity or accuracy of such claims.

- B. The provisions of this Abatement Order on Consent shall apply to and be binding upon the parties executing this Agreement, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties.
- C. Regarding violations of the Missouri Clean Water Law, the City shall:
- (1) Within fifteen (15) days clearly mark outfall 001 in the field.
 - (2) Take corrective action so as to ensure that all of its aerators at the WWTF are operable on or before May 1, 2009 and shall continue to maintain its aerators to ensure that they continue to operate properly.
 - (3) Within sixty (60) days of the effective date of this Abatement Order on Consent submit to the Department for review and approval a report, prepared by an engineer licensed to practice in the State of Missouri, recommending interim upgrades and/or operational changes and a schedule for implementation that will enable the City to comply with its current permitted effluent limitations.
Immediately upon receiving Department approval implement the recommendation(s) in accordance to the approved schedule.
 - (4) On or before May 31, 2010, submit to the Department for review and approval an engineering report, prepared by an engineer licensed to practice in the State of Missouri, recommending upgrades or replacement of the City's WWTF that will enable effluent from the City to comply with the final effluent limitations contained in Missouri State Operating Permit No. MO-004734, effective July 3,

2008. The engineering report shall include a date for the submission of the construction permit application, a construction schedule, and a date for completing construction. The City shall implement the schedule as approved by the Department in its approval letter and comply with all final effluent limitations contained in Missouri State Operating Permit No-004734 on or before July 4, 2011.

(5) Fully implement all of the requirements of Appendix A of this Abatement Order on Consent, Wastewater Collection and Treatment System Management Program and if required complete improvements to its collection system that work toward eliminating, incidents of Sanitary Sewer Overflows from its collection system and bypasses at the WWTF.. All documents submitted to the Department pursuant to Appendix A shall be subject to review and approval by the Department and shall be fully implemented by the City upon approval. If the Department comments and/or requests modification of any documents submitted to the Department pursuant to Appendix A, the City shall make the modifications as directed by the Department and/or address the Department's comments and resubmit the document(s) within (15) fifteen days receipt of the Department's comment(s).

(6) In the period of time from the effective date of this Abatement Order on Consent until the new or upgraded WWTF is completed, operate the existing WWTF at all times so as to produce the best effluent quality possible. All units or components of the existing WWTF shall be maintained in an operable

condition, even if this requires the purchase and installation of new parts or equipment and the repair of the facility.

- D. Should the City fail to meet the terms of this Abatement Order on Consent including the deadlines for completion of construction set out in paragraphs C and D, above, the Department may impose stipulated penalties and the City agrees to pay such stipulated penalties, in the following amounts:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$150 per day
31 to 90 days	\$300 per day
91 days and above	\$500 per day

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

JoAnn Horvath
Collections Specialist
Office of the Attorney General
P.O. Box 899
Jefferson City, MO 65102-0899

- E. Nothing in this Abatement Order on Consent forgives the City from future compliance with the laws of the state of Missouri, nor requires the Department or state of Missouri to forgo pursuing by any legal means any noncompliance with the laws of the state of Missouri.
- F. The terms stated herein constitute the entire and exclusive agreement of the

parties. There are no other obligations of the parties, be they expressed or implied, oral or written, except those that are expressly set forth herein. The terms of this Abatement Order on Consent supersede all previous memoranda or understanding, notes, conversations, and agreements, expressed or implied.

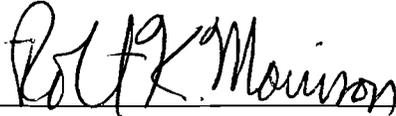
- G. The effective date of the Abatement Order on Consent shall be the date the Department signs the Agreement.
- H. The City agrees to comply with the Missouri Clean Water Law, Chapter 644, RSMo, and its implementing regulation at all times in the future.

V. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions pertinent to wastewater operations outlined in this Abatement Order on Consent shall be directed to:

Mr. Paul Dickerson
Compliance and Enforcement Section
Water Pollution Control Branch
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 21 day of January, 20089



Robert K. Morrison, P.E., Chief
Water Pollution Control Branch
Missouri Department of Natural Resources



William Kirkpatrick, Mayor
City of Piedmont

- c. Ms. Diane Huffman
Chief, NPDES and Facilities Management Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII
901 North Fifth Street
Kansas City, KS 66101

Mr. Joseph P. Bindbeutel
Chief Counsel
Agriculture and Environment Division
Office of the Attorney General
P.O. Box 899
Jefferson City, MO 65102-0899

Mr. Gary Gaines, P.E.
Regional Director
Southeast Regional Office
Department of Natural Resources
2155 N. Westwood Blvd
Poplar Bluff, MO 63901

Mrs. Kristin M. Perry, Chair
Missouri Clean Water Commission
P.O. Box 418
Bowling Green, MO 63334

Mr. William A. Easley, Jr., Commissioner
Missouri Clean Water Commission
P.O. Box 126
Cassville, MO 65625

Mr. Ron Hardecke, Commissioner
Missouri Clean Water Commission
3944 Blocks Branch Rd.
Owensville, MO 65066

Mr. Ben A. "Todd" Parnell, III, Commissioner
Missouri Clean Water Commission
Drury University
900 N. Benton
Springfield, MO 65802

Mr. Frank L. Shorney, Commissioner
Missouri Clean Water Commission
4609 Northeast Dick Howser Circle
Lee's Summit, MO 64064

Mr. Jan C. Tupper, Commissioner
Missouri Clean Water Commission
2827 South Michigan
Joplin, MO 64804

Dr. Samuel M. Hunter, Commissioner
Missouri Clean Water Commission
1288 State Highway HH
Sikeston, MO 63801

APPENDIX A

WASTEWATER COLLECTION AND TREATMENT SYSTEM MANAGEMENT PROGRAM

1. Definitions

A. Building/Private Property Backup and Backup. Any release of wastewater from the City's Sanitary Sewer System to buildings or private property. The City is not be responsible for any backup caused by blockages, flow conditions, or malfunctions of a private service connection or other piping/conveyance system that is not owned or operationally controlled by the City or overland flooding not emanating from the City's Sanitary Sewer System.

B. Bypass. The diversion of waste streams from any portion of a treatment facility including any discharge from the wastewater treatment facility that receives less than secondary treatment, whether or not authorized by the Missouri State Operating Permit.

C. Collection System and Sanitary Sewer System. The sewage collection and transmission system including all pipes, force mains, gravity sewer lines, pumping stations, manholes, and appurtenances thereto that are owned or operated by the City and designed to convey wastewater to the City's wastewater treatment facility or to one or more points of discharge.

D. Infiltration. Water other than wastewater that enters a Sanitary Sewer System, including sewer service connections and foundation drains, from the ground through such means of defective pipes, pipe joints, connections, or manholes.

E. Inflow. Water other than wastewater that enters a Sanitary Sewer System, including service connections, from sources such as, but not limited to roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage.

F. Inflow and Infiltration (I/I). The total quantity of water from inflow, infiltration and rain induced infiltration without distinguishing the source.

G. Private Service Connection. The portion of the Collection System, not owned by the City, used to convey wastewater from building or buildings to that portion of the Collection

System owned by the City.

H. Sanitary Sewer Overflow (SSO). An overflow, spill, diversion, or release of wastewater from the City's Collection System to waters of the state, as well as to public or private property including Building/Private Property Backups.

I. Wastewater Treatment Facility (WWTF). The sewage treatment plant operated by the City, and all components of such sewage treatment plant.

2. Information Collection and Utilization

SSO, Bypass and Basement Backup Tracking and Data Management System (Tracking and Management System). Within ninety (90) days of the effective date of Abatement Order on Consent (AOC) No. 997, the City shall to submit to the Missouri Department of Natural Resources (Department), for review and approval, a description of a written or electronic Tracking and Management System that documents information regarding SSO events, bypasses and basement backups; and allows the City to organize and analyze information regarding SSO events, bypasses and basement backups collected by the City. The City shall immediately implement the provisions of the Tracking and Management System upon receiving the Department's approval and to the extent practicable, incorporate this system into a computer-based program that allows authorized City personnel access to the information.

The Tracking and Management System shall include all information necessary for the City to establish an effective and useful information collection and system for SSOs, bypasses, backup events, and responses to such events. The Tracking and Management System shall also be designed and operated in a manner that allows the City to use the system for operation and maintenance activities, long term management of the City's wastewater treatment system, and development of the I/I Assessment and Reduction Plan pursuant to Section 3 of this Appendix and the Maintenance and Repair Program provisions required by Section 4 of this Appendix. The Tracking and Management System shall also incorporate the quality assurance and quality control practices the City will follow to ensure the accuracy and reliability of data collected and managed. The

Tracking and Management System shall include, but not be limited to, the following:

- (1) The date and time (or best estimate) that the SSO, bypass or backup event began;
- (2) Precipitation data (including intensity and duration);
- (3) The source of information for the SSO, bypass or backup event, e.g., employee observation, electronic reporting or warning system, citizen complaint;
- (4) The specific (and general) location of the SSO, bypass or backup (i.e., street address and specific basin or geographic area of the City);
- (5) The best estimate (unless monitored) of the duration of the discharge, including the ending date and time;
- (6) The best estimate (unless monitored) of the volume discharged, including flow metering data, where applicable;
- (7) Sampling results from any sampling performed;
- (8) If applicable, the water body into which the wastewater was released;
- (9) The specific cause(s) of the discharge, if known, including for backups, whether it was caused by the City's collection system or private service connections;
- (10) Measurements taken to respond to the discharge event and minimize the duration and/or impacts of the discharge;
- (11) The specific measures the City intends to use to prevent recurrence of the discharge;
- (12) The date and time a repair crew arrived on-site and the personnel involved, if repair was required; and
- (13) The date and time of notification to the Department's Southeast Regional Office.

3. I/I Assessment and Reduction Plan

A. Immediately upon the effective date of Abatement Order on Consent the City shall begin monitoring and documenting inflow data from the both influent lines to its WWTF. The City shall use the flow totalizer at the influent structure of its WWTF and in the interim until a flow meter is installed the City shall monitor and document from the force main influent line by either pump runtimes or other means available to the City. The City shall also record daily rainfall totals. The flow data and rainfall data shall be recorded on the City's monthly DMR and submitted to the Department for review by the 28th day of the following month.

B. On or before May 31, 2010 the City shall submit to the Department for review and approval an engineering report certifying that the City's wet weather flows during the previous three hundred and sixty-five days (365) are either less than 2.5 times than the City's average dry weather flow or equal to or greater than 2.5 times the average dry weather flow.

C. If the City's wet weather flows are equal to or greater than 2.5 times the City's average dry weather flow than within sixty (60) days of receiving the Department's approval of the engineering report the City shall submit to the Department, a detailed Plan to Assess and Reduce I/I (I/I Assessment and Reduction Plan) containing a schedule for locating sources of I/I, describing the source and its causes, and rate its priority for correction. The I/I Assessment and Reduction Plan shall divide the collection system into designated areas that will be prioritized by the City based on known problem areas with a schedule to inspect the lines in a the designated area. Sewer lines that were installed within the last fifteen (15) years may be excluded from the plan unless the City has reason to believe they are a major source of I/I. Upon approval, the City shall immediately implement the provisions of the I/I Assessment and Reduction Plan as a condition of compliance AOC No. 997.

4. Maintenance and Repair Program

A. Within 270 days of the effective date of AOC No. 997, the City shall develop a Maintenance and Repair Program for the City's collection system. The suggested guidance for developing the Maintenance and Repair Program is the United States Environmental Protection Agency's Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems (Document No. EPA 305-B-05-02). The City's Maintenance and Repair Program shall include a schedule for routine and systematic inspection of the City's collections system that will provide information it can use to identify short and long term capital investment projects and activities that will be necessary to ensure current and long

term compliance with the City's Missouri State Operating Permit.

B. The City's Maintenance and Repair Program shall include a process to reevaluate the assumptions, schedules, and conclusions of the City's Maintenance and Repair Program, including information developed through implementation of the I/I Assessment and Reduction Plan, and revise the City's Maintenance and Repair Program as necessary to ensure it continues to provide a viable planning tool that to enable the City to continue to effectively and efficiently operate the City's wastewater treatment system and comply with its Missouri State Operating Permit. The reevaluation process shall be planned no less frequently than every two years after preparation of the City's Maintenance and Repair Program.

5. Reporting and Record Keeping

A. Immediate Reporting. The City shall verbally notify the Department within twenty-four (24) hours from the time the City becomes aware of any discharges from the WWTF that receives less than secondary treatment, regardless of whether or not the discharge is a violation of the City's Missouri State Operating Permit and each SSO event, with the exception of backups that are contained within a building. The City shall also submit a written report to the Department within five (5) days from the time the City becomes aware of any dry weather bypasses or SSOs as described above and report wet weather bypasses and SSOs with its Discharge Monitoring Reports.

- (1) The written report shall contain the date, time, location, and estimated volume of the event, precipitation information (amount and duration), if any, and any additional information the City determines may be helpful in explaining the event and its circumstances or impacts.
- (2) Reporting required under this Subsection to the Department is in addition to any reporting required by the City Missouri State Operating Permit.

B. Semi Annual Reporting. If the City is required to implement an I/I Assessment and Reduction Plan as described in Section 3 above, then immediately upon the Department's approval of the I/I Assessment and Reduction Plan, the City shall submit in writing to the Department six (6) month status reports on or before the 28th day of April and October every year

thereafter until termination of AOC No. 997. The April report shall cover activities that occurred during September, October, November, December, January, February and March; and the October reports shall cover activities that occurred during April, May, June, July, August, and September. The Semi Annual Reports shall contain a summary of the status and progress of all projects and programs required by the Appendix, including, but not limited to:

- (1) A summary of information collected pursuant to Section 2 of this Appendix, including a tabulation of each SSO, bypass and backup event.
- (2) A list of all confirmed I/I sources, the date (best estimate) of confirmation, whether the Inflow source or Infiltration source is on private or public property, and the removal or correction date. If the source has not yet been removed or corrected then include the expected date. If the source is located on private property, identify all actions take by the City and the date taken to secure the source(s) removal or correction.
- (3) A description of all preventative maintenance activities undertaken by the City. This shall include information identifying specific pipe segments, manholes, pump stations or other structures within the collection system which were inspected, cleaned, repaired or replaced. Where available, maps shall be submitted documenting the information provided in the report.
- (4) The status of implementation of all plans required by Sections 3 and 4 of this Appendix, including a statement as to whether specific schedule milestone dates in the schedules included in each approved plan were met. Upon completion of a specific project in the approved plans, the City shall submit a certification that the specified work has been completed, including the following documentation of the completed work to the Department:
 - (a) For work performed by a private contractor City personnel shall complete an inspection report for the completed project and the certification by the City's Engineer that the specified work has been completed; and
 - (b) For work performed by the City personnel a copy of the work order for the project verified by the City's Engineer as complete.
- (5) A list of all Missouri State Operating Permit violations within the quarter. This tabular listing shall include the date of the violation, the parameter exceeded, the permit limit, the reported amount, and any additional relevant information included in each Discharge Monitoring Report (DMR) within the quarter, or on the cover letter for the DMR (i.e., claim of upset, etc.)

C. The City shall maintain copies of all written submissions prepared pursuant to this Appendix for at least thirty-six (36) months after termination of AOC No. 997.

6. Requesting Termination of Reporting Requirements

Upon successful completion of all construction activities identified within the approved I/I Assessment and Reduction Plan under Section 3 of Appendix A; full and successful implementation of all action required pursuant to Sections 2 and 4 of Appendix A; and reporting as required by Section 5 of Appendix A, the City may submit a report to the Department demonstrating such compliance and implementation of the required actions and request termination of the reporting requirements contained in Section 5 subparagraph B of Appendix A.

The Department will consider termination of the reporting requirements contained in Section 5 subparagraph B of Appendix A when all actions identified above have been completed and the City Demonstrates that it has corrected deficiencies within the physical structures comprising the City's wastewater treatment system, has significantly improved operation and maintenance processes, data collection and utilization, and has eliminated, to the extent feasible, SSOs, bypasses and backups. The reporting requirements of this Appendix shall remain in effect until a written notice of termination is issued by an authorized representative of the Department.