

Missouri Clean Water Commission
Capitol Plaza Hotel and Convention Center
415 W. McCarty Street
Jefferson City, Missouri 65109

November 7, 2012

Jefferson County C-1 Water District

Issue: During the Clean Water Commission's September 5, 2012 meeting Mr. Donovan Larson requested that the Commission consider modifying its procedures so civil penalties are not assessed when there is a release of chlorinated drinking water from a break in a water main.

Background: Over the past several years the Jefferson County Water District has experienced two water main breaks that resulted in fishkills in nearby streams. The first event occurred in July 2007 and resulted in a kill of 14,417 fish in Moss Hollow and Glaize Creek. The second event occurred in August 2011 and resulted in a kill of 824 fish in Rock Creek. In both cases the Water Protection Program initiated enforcement action and pursued civil penalties for violations of the Missouri Water Quality Standards general criteria and for causing pollution to waters of the state.

Recommended Action: Further discussion at Chair Hunter's request.

Suggested Motion Language: None.

List of Attachments:

- Copy of Jefferson County C-1 Water District Presentation to Commission September 5, 2012
- Department's September 18, 2012 Letter

Presented to CWC
Sept. 5, 2012.

PRESENTATION TO MO CWC 9-5-12

Mo DNR Pollution / Fishkill Investigations associated with Jefferson County Water District C-1

EVENT 1

Fishkill ID: 2007008

Event Date: 7-20-07

Description: Water main break, discharge of chlorinated water into Glaize Creek, Jefferson County, MO. Repaired same day by Jefferson County Public Water Supply District No. C-1

Fine: \$3827.70 (value of fish and of investigative time)

Resolution: **Paid \$3827.70** on 1-12-09 without admittance of guilt

EVENT 2

Notice of Violation: #SLR2011082211544284

Event Date: 8-1-~~12~~ 11

Description: Water main break, discharge of chlorinated water into Rock Creek, Jefferson County, MO. Repaired same day by Jefferson County Public Water Supply District No. C-1

Fine: Punitive: \$8000.00 (later reduced to **\$7500**)

Investigation and damages: \$460.82 (value of fish and of investigative time)

Resolution: Water District C-1 attempted to negotiate the fine. Then, in an effort to make better local use of the punitive fine, we asked and were allowed to **spend \$7263.00** on a drug education and take-back project in conjunction with the Jefferson County Sheriff's Department. Also,

Paid \$500.00 to Jefferson County school fund on 4-30-12, also

Paid \$460.82 to State of Missouri on 4-30-12

FACTS:

- **Public Water Districts are created by the State of Missouri**, for the benefit of the public.

- Water Districts, responsible for pumping, treating, and distributing **fresh water, treated with chlorine as the State Statutes require**, suffer the same monetary and aesthetic damage as does the State when its waters are degraded.
- Water pipes are purchased and **installed within the Statutes** of the DNR Design Guide for Community Water Systems and are of the quality demanded therein.
- **Predicting the location** of a water main that will break in the future is **not possible**. Thus, diminishing the likelihood of chlorinated water discharge would require entire sections of pipe to be replaced, much sooner than the 100 year life that the Public Service Commission recognizes as the pipe's reasonable life. Sections of pipe with high frequencies of breaks (greater than 15 breaks per mile per year, as agreed to by the Public Service Commission in private water company applications) are very rare in our Water District. We last replaced several sections that were much less failure-prone in recent years and have not identified another such section to-date.
- Increases in **water rates** to cover the costs of penalties such as this **must come from the public**. That public, unlike the customers of a polluting hog farm, has no choice as to where to purchase its water. Increasing our costs does not have the effect of improving the Water District management's resource sensitivity, as it might in managing a hog farm. We are already resource-sensitive, and our customers already are concerned about the cost of water.
- The American Water Works Association and the Missouri Rural Water Association are concerned that **the thousands of water main breaks** that its thousands of municipal members experience every year will become a new source of revenue for government agencies through the application of the laws that you reference in these Fishkill fines.

RESOLUTION:

The State must recognize all pollution sources equally based on environmental impact, but the Water Utility industry should be allowed this variance. We request that the CLEAN WATER COMMISSION consider a modification in its procedures such that, in the **event of future faultless main break events, no civil (punitive) penalties** are assessed beyond the measurable damages to fish and the related labor to measure such damage.

Respectfully submitted,

Donovan Larson
 Jefferson County Water District No. C-1
 PO Box 430
 Barnhart, MO 63012
 Office: 636-948-2500
 Fax: 636-942-3173
 Email: dlarson@pwsdc1.com

PUBLIC WATER SUPPLY DISTRICT NO. 3

Board of Directors
Rickford Counts
Ralph Stuckmeyer
Ralph Ott
Jerry Jones
Wayne Huff

P. O. Box 920
1469 Old Highway 21
Arnold, Missouri 63010
Phone: 636-296-7053 • Fax: 636-296-0803

Officers
Cheryl Moellering, Mgr.
Betsy Hanks, Clerk
Connie Swaller, Treas.

August 21, 2012

Mr. Donovan Larson
Public Water Supply District C-1
P. O. Box 430
Barnhart, MO 63012

Dear Mr. Larson:

Public Water Supply District #3 is in complete agreement with the logic that water supply districts should be treated differently than other polluters when a water main breaks and enters a stream. As a fellow Water District Manager, I agree that we are not in control of water main breaks and should not be fined punitive damages for an unpreventable potable water spill into a stream.

Water must be treated with disinfection methods to provide safe drinking water and we surely should not be penalized for following the regulations that are set forth by State and Federal governing agencies.

It is my hope that the Clean Water Commission will understand the unfair position that has been imposed and find a better solution. I want you to know that as President of the Water District Managers' Association of Jefferson County, Missouri, you also have the full support of our organization.

Sincerely,



Cheryl Moellering
Manager
Public Water Supply District No. 3
Jefferson County, MO

Herky sends 300,000 gallons of drinking water into creek

Joachim Avenue tower needed cleaning, chlorine

By Clementine Carbery
For the Leader

The city of Herculaneum was forced to take emergency steps over the weekend to drain its 400,000-gallon water tower on Joachim Avenue at the north entrance of town after samples showed that the chlorine content in the water was too low.

City Administrator Jim Kasten said city water service was not affected.

"There was never any danger," Kasten said. "We caught the situation well before there was any kind of major problem."

The Joachim Avenue tower serves customers at the northern end of town, he said.

Kasten said Utility Services of Jefferson City cleaned the tower and performed an acid wash on it Monday; officials are hoping to refill the tank and bring it back on line by Friday.

The charge from Utility Services is \$4,120. The Board of Aldermen voted 6-0 Monday to pay the bill. Money is available in the budget to cover the expense.

Kasten said city workers discovered the problem early last week during routine testing. They tried to resolve the issue by dropping additional chlorine into the water, but it did not help, he said.

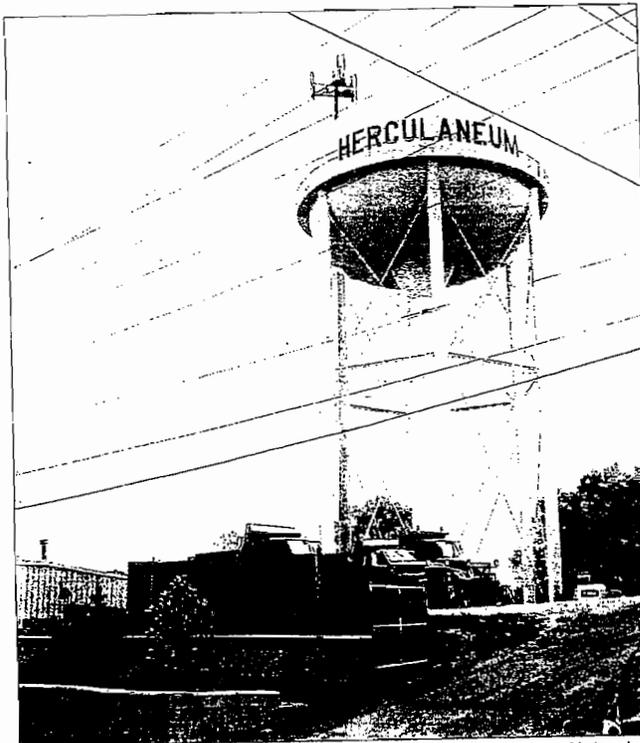
"It didn't hold up," Kasten said.

The tower then was taken out of service.

The city began draining it Oct. 7. The process was completed Monday. Kasten said the tank was approximately three-quarters full, about 300,000 gallons, when it was emptied.

The water was directed into a drainage ditch that runs along Hwy. 61-67. Its final destination after traveling through the stormwater runoff system was Joachim Creek, he said.

Kasten said this is the first time the tower has been emptied and cleaned since it was built eight years ago. He said photos taken two years ago of the inside of the tower showed no problems.



Laura Marlow photo

The Herculaneum water tower on Joachim Avenue was drained after tests showed that chlorine in the water was too low.

Kasten told the board Monday he plans to look into the possible purchase of a machine that stirs up the water inside a tank to more evenly distribute chlorine and to keep temperatures level throughout.

It costs approximately \$25,000. Kasten said he will bring the information back to the board at a future meeting.

Herculaneum also has towers on Scenic Drive and on McNutt Street near the Prairies of Friedberg Estates.

Herculaneum called Utility Services to clean the Joachim Avenue tank because the city already contracts with the company for the maintenance of its Scenic Drive water tower, he said.

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For More Information Contact:
Rev. Carleton Norton, 636-797-5643

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Cedar trees, turned brown by pesticide spray, contrast with the lush green of the rest of the area around a sewer retention pond in De Soto.

What killed De Soto's trees? Rain had nothing to do with it

By Steve Taylor
For the Leader

This spring's generous rainfall has led to luxuriant flowers, trees and shrubbery, with the curious exception of a number of withering cedar trees that line the side of the sewer retention pond on the north side of De Soto.

City Manager David Dews told the City Council at Monday's meeting that an investigation has revealed why the trees are dying.

"It turns out that AmerenUE (which has an easement for electric lines along

the east side of the property) was spraying for some vegetation underneath their lines and they killed cedar trees in the process," Dews said.

He said he didn't know how many trees were affected.

"There aren't five trees or six trees or 10 trees. There are a bunch of trees," he said.

He said officials from AmerenUE have said the company accepts responsibility for the problem, but he said he's waiting to hear back from them to determine what will be done to remediate the problem.

Dead fish will cost De Soto nearly \$3,000

By Steve Taylor
For the Leader

For De Soto officials, the price of fish — about 60 cents each — is more than they want to pay, but they have little choice.

The City Council voted unanimously at Monday's meeting to authorize a payment of \$2,891.81 to the state Attorney General's Office after the Missouri Department of Natural Resources' Water Protection Program found the city liable for a contaminant that was found in the city's wastewater treatment plant on Aug. 23, 2007.

Once water contaminated with that substance made its way into Joachim Creek, state officials determined that nearly 5,000 fish died.

Officials from the state Department of Conservation determined that the substance was crude glycerin, a byproduct of biodiesel fuel production.

"An unknown person dumped this substance into the wastewater treatment system, and it made its way to our plant," City Manager David Dews said.

The white substance was found in the treatment plant's clarifiers, which contaminated the treated water released into the creek.

"Once a substance is introduced into

our system, by means legal or illegal, we're responsible for it," Dews said.

Dews said the culprit has not yet been identified.

Conservation officials estimated that 4,821 fish were killed as a result of the incident.

Dews said that the city is being fined for the dead fish only.

"They have the authority to come after us for their out-of-pocket expenses (to investigate the incident), but they're not doing that," he said.

He said the city is essentially powerless to stop such situations.

"There's nothing we could have done to prevent this," he said. "Once it entered our plant, it's all over."

Adjustment board gets new member

The De Soto City Council voted unanimously at Monday's meeting to appoint Richard McCane as an alternate member of the city's Board of Adjustment, which hears appeals of zoning matters.

McCane, a city resident for 27 years, is a local builder and contractor.

His appointment, which will run through 2011, leaves one vacancy still to be filled on the adjustment board.

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700 water main breaks in Houston — a day

City imposes water rationing; heat, high use put pressure on pipes across central US



Pat Sullivan / AP
A broken water main was being replaced in Houston, Texas, on July 27.



By **Miguel Llanos** Reporter

msnbc.com

msnbc.com

It's not just hot and dry in Houston, the city's also losing water at an alarming rate due to water main breaks — 700 a day, the mayor said Tuesday.

Other cities across the central U.S. — which has had the worst of this summer's heat — are also seeing more breaks than usual as older pipes feel the strain from both sides: increased water use builds pressure from

inside pipes, while dry soil shrinks away, leaving space on the outside of pipes for the inside pressure to burst through.

While many homeowners know the frustration of frozen pipes bursting "it can be surprising to know that high heat can also put stress on a pipe and cause it to break," Greg Kail, spokesman for the American Water Works Association, told msnbc.com.

"The nationwide infrastructure is getting older," he added, "and when pipes begin to corrode and weaken they're more susceptible to breaks brought on by temperature conditions."

In Houston, water rationing began this week and a frustrated Mayor Annise Parker said that was largely due to the water main breaks.

"Normally, in a summer we have 200 water main breaks a day over our 7,000 miles of pipes," she told KPRC TV. "Right now we're over 700 a day and we have a difficult time maintaining the water pressure."

About 40 crews are working on repairing broken water mains, officials said.

The rationing bans residents from outdoor watering more than twice a week and it has to be done between 8 p.m. to 10 a.m.

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"While these restrictions are mandatory, we will begin with warnings and an informational campaign because the goal is voluntary compliance," Parker said in a statement Monday. "For those who insist on not being good neighbors, citations will follow."

Houston on Monday also saw its 15th straight day at 100 degrees or worse, breaking its previous record, set in 1980. The trend should continue for at least the rest of the week.

Other cities dealing with a backlog of water main breaks include Corpus Christi, Texas, San Antonio, Texas, and OklahomaCity.

In Kemp, Texas, a town of some 1,500 people about 45 miles southeast of Dallas, residents lost their water for three days last week after water tanks went dry due to drought and water main breaks.

Walmart came to the rescue by trucking in pallettes of water, and city hall provided water only for non-drinking purposes.

Nationally, the American Society of Civil Engineers has graded the U.S. water infrastructure as a D- and noted that many water mains are beyond their designed life span of 65-95 years.

"Leaking pipes lose an estimated 7 billion gallons of clean drinking water a day," the society said in its most recent report card.

"Drinking water systems face an annual shortfall of at least \$11 billion in funding needed to replace aging facilities that are near the end of their useful life and to comply with existing and future federal water regulations," it added.

Kail, the AWWA spokesman, notes that most

of the nation's water pipes were installed in three periods: the late 1800s, the 1920s and the post World War II era.

"In many parts of the country those pipes are all wearing out at about the same time," he says, noting that a 2001 AWWA study estimated it would cost \$250 billion to repair or replace aging water pipes.

Cities can either fix the pipes before or after they break, but before is much cheaper, Kail argues. Much like a car, he says, "if you invest along the way you're not going to be hit with the big bills later."

The AWWA hopes to get a bill sponsored in Congress that would provide low-cost loans for public entities to make those investments at a time of tight budgets.

"If we simply defer those costs, thinking that other more visible things are more urgent, the price tag is going to go up considerably," Kail says.

"Communities are going to have to make some hard decisions," he adds. "Your water pipes are out of sight and out of mind usually until there's a break or interruption of service. When water systems do fail it doesn't take long for a community to understand their value."

Reuters contributed to this report.

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June 24, 2008

Edward Galbraith, Director
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

Dear Mr. Galbraith:

I appreciate the time you took on June 20, 2008 to discuss the recent situation involving Consolidated Public Water District #1 of Jefferson County and a fish kill allegedly caused by tap water released by the district during an accidental main break on or before July 20, 2007.

Based on correspondence I have in my possession and your comments on June 20, it is my understanding that Department policy at this time is to assess fees upon the water district (or any public water system in a similar situation) for both state employee time to investigate such an incident and costs for any fish determined to have been harmed by the incident. Rationale for this policy seems to be based on a desire for consistency in assessing penalties for such events and attempts to treat the release of tap water, which met all standards set by both state and federal standards for human consumption under accidental circumstances, the same as a release of sewage or highly toxic chemicals under similar circumstances.

While one might make the case that the end result to the fish in question might be the same, it seems somewhat silly to even begin to compare the environmental damage from an accidental release of tap water to the release of substances such as sewage, animal wastes, heavy metals, etc. Would a private property owner, draining their inflatable pool at the end of summer be cited for similar damages? If the same pool simply ruptured and suddenly released water would damages be assessed? At some point, a desire for "consistency in enforcement" within the Department must be balanced by some common sense.

We agree that dialog on this issue should continue and look forward to your attendance at our July 23, 2008, board meeting to discuss the Department's position on this. We hope that your visit with us on the 23rd will be to announce that the Department has reassessed their policy on accidental releases of tap water into the environment by public water supplies and that after consideration and review, the Department chooses to view such matters as they truly are: an unfortunate, unavoidable event that all parties wishes could be avoided but is a reality of providing potable drinking water to millions of Missourians 365, days per year.

Thanks for your consideration of this matter.

John Hoagland
Executive Director
Missouri Rural Water Association

Donovan

From: J. Hoagland [jhoagland@moruralwater.org]
Sent: Monday, June 23, 2008 3:45 PM
To: 'Donovan'
Subject: MRWA Response to C-1 Incident

Donovan,

Please convey my regards to Ron and all at C-1. As you may or may not know, I have had several phone conversations with DNR in regard to this issue. I am attaching a copy of a letter that will go out tomorrow to DNR from MRWA in regard to the situation. Needless to say, my board feels strongly that this issue is one that we need to pursue, not just in regard to C-1, (your fate may be sealed) but to protect future water supplies from a similar outcome.

All that said, one never knows the outcome in these matters but suffice to say, we are pursuing resolution.

I know your system has close ties to AWWA and I am assuming they have protested vigorously, a copy of their letter and actions might be helpful so that we can coordinate efforts.

Thanks and please keep us apprised from your end of developments on this issue.

Jo

WASTEWATER PERMITS TO INCLUDE ANTIDEGRADATION REVIEW

New requirements for wastewater permitting are coming. Starting in August, all permit applications for new or expanded discharges will be required to follow the new Missouri Antidegradation Rule and Implementation Procedure.

All waters of the state are categorized into three tiers. Tier III waters are the Outstanding National and State Resource Waters; Tier II waters have water quality significantly better than water quality standards; and Tier I streams are near or at the minimum standards for water quality. An antidegradation review is required when a new or newly expanded facility discharges to a Tier II water and significant degradation of the water quality is proposed for a pollutant of concern. The department will require an alternatives analysis of less-degrading and non-degrading alternatives to the selected treatment process. These alternatives must be evaluated for practicability and economic efficiency, and may also be evaluated for affordability. Some lowering of water quality may be deemed necessary to accommodate important economic or social development. However, the water quality can not go below the water quality standard.

To assist understanding of the antidegradation review process, the department is hosting workshops across

the state. This half-day workshop is geared towards staff involved in the development of engineering plans and construction permit application. The workshop is department-approved for renewal credit hours for operator certification.

The workshops will cover the background of the implementation procedure, the importance of water quality review assistance and antidegradation applicability and alternative analysis, as it relates to the permitting process. Following is a list of dates and locations:

June 2	Saint Louis
June 3	Springfield
June 4	Lee's Summit
June 5	Columbia
June 18	Poplar Bluff

For more workshop information, visit www.dnr.mo.gov/env/wpp/cwforum/antidegradation-workshops.htm. For more information on Antidegradation, visit www.dnr.mo.gov/env/wpp/wqstandards/wq_antideg_pol.htm or call the Water Protection Program at 573-751-1300.

WHEN DRINKING WATER CAUSES A FISH KILL

This article may be of particular interest to drinking water operators. It discusses what to do if a discharge from a main break causes a fish kill. It's important to note that the utility should notify the department any time there is a water quality standard violation, not just fish kills. For more information about the water quality standards and when to notify the department, please visit the department's Web site at www.dnr.mo.gov/env/wpp/wqstandards/wq_criteria.htm

Drinking water that contains free chlorine or chloramine in concentrations allowed by the Safe Drinking Water Act can be lethal to fish and other aquatic life. A water main break or leak that causes drinking water to enter water that supports aquatic life can cause a fish kill. This is a violation of the Missouri Clean Water Law.

Chlorinated drinking water becomes a water contaminant when it is discharged to rivers, streams, lakes or other waters defined as "waters of the state" in concentrations that alter the physical, chemical or biological properties of the waters. Discharging a water contaminant that reduces the water quality below the state's Water Quality Standards is a violation of the Missouri Clean Water Law.

(Continued on page 6)

(Continued from page 5)

When a water main break occurs, the utility should eliminate the source of the discharge as quickly as possible. Once the utility has regained control of the source, it should take steps to minimize the effects of the discharge on waters of the state. When the discharge of drinking water causes a fish kill, the responsible utility must notify the Missouri Department of Natural Resources' Environmental Emergency Response at 573-634-2436. It is the responsibility of the Missouri Department of Natural Resources and the Missouri Department of Conservation to conduct on-site evaluations to assess damages and monitor the utility's response to the incident.

Chlorine is volatile when exposed to air. On a hot day drinking water containing chlorine can be sprayed into the air or directed to run off a hot parking lot or across a field to minimize the risk of killing fish once it reaches the stream. Chloramines persist longer, which makes them ideal for disinfecting drinking water, but present a higher risk of a fish kill unless chemically treated before released to the environment.

Research indicates that water containing free chlorine and chloramine affects the fish's ability to transport oxygen in their bloodstream. Fish stressed by chlorine or chloramine can be observed gulping air at the water's surface similar to fish placed in an oxygen depleted environment.

In the event of a fish kill, the state may require the utility to reimburse the state for the value of the loss to the state's resources and the state's costs in the investigation. Assessment of civil penalty will be made on a case-by-case basis with leniency given to water systems that regularly maintain and replace aging water mains, especially if this is part of an effective Technical, Managerial and Financial program. Fish costs are based on procedures outlined in the American Fisheries Society, Special Publication 30, *Investigation and Monetary Values of Fish and Freshwater Mussel Kills*, while the state's costs are based on expenses directly attributed to the investigation such as staff time and analytical costs, which are not negotiable.

For additional information, contact Mary Ann Redden with the department's Water Protection Program at 573-522-4018.

MISSOURI WATER QUALITY CRITERIA

Criteria are elements of water quality standards, expressed as concentrations, levels, loads or narrative statements that represent the quality of water required to meet a designated or beneficial use.

Numeric criteria in the form of concentrations, loads, values etc. are applied to classified waters only. The majority of Missouri's numeric criteria can be found in tables A and B in 10 CSR 20-7.031.

Listed below is the set of eight narrative or general criteria for Missouri that must be met in all waters of the state.

General Criteria

No water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting the following conditions:

1.	Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses.
2.	Waters shall be free from oil, scum, and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses.
3.	Waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses.
4.	Waters shall be free from substances or conditions in sufficient amounts to result in toxicity to human, animal, or aquatic life.
5.	There shall be no significant human health hazard from incidental contact with the water.
6.	There shall be no acute toxicity to livestock or wildlife watering.
7.	Waters shall be free from physical, chemical, or hydrologic changes that would impair the natural biological community.
8.	Waters shall be free from used tires, car bodies, appliances, demolition debris, used vehicles or equipment and solid waste as defined in Missouri's Solid Waste Law, section 260.200, RSMo, except as the use of such materials is specifically permitted pursuant to section 260.200-260.247.



CONSOLIDATED PUBLIC WATER SUPPLY DISTRICT NO. C-1
OF JEFFERSON COUNTY, MISSOURI

May 1, 2012

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

Reference: Abatement Order on Consent (AOC) number 2011-WPCB-1157
In reference to: Notice of Violation #SLR2011082211544284
Water Main Break on 8-1-11 at Mastodon Drive and Seckman Road,
Jefferson County, MO

Dear Ms. Savage-Clarke:

Please find (enclosed) the overly punitive, signed AOC.

Sincerely,

A handwritten signature in black ink that reads 'Donovan Larson'.

Donovan Larson, P.E.
Manager / District Engineer

Copy:
Paul Dickerson, Acting Chief
Compliance and Enforcement Section



rec'd 4-26-12 @ C-1

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director

www.dnr.mo.gov

April 23, 2012

CERTIFIED MAIL: 7004 1160 0000 8173 4293
RETURN RECEIPT REQUESTED

Mr. Donovan Larson, Manager
Jefferson Co. Cons. PWSD #C-1
P.O. Box 430
Barnhart, MO 63012

RE: Jefferson Co. Public Water Supply District #C-1, Jefferson County

Dear Mr. Larson:

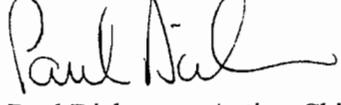
Enclosed for your consideration, please find one (1) copy of a revised Abatement Order on Consent (AOC) to resolve past violations of the Missouri Clean Water Law that were documented by the Missouri Department of Natural Resources (Department) in Rock Creek at the Frisco Hill Road Bridge. If the AOC is acceptable as written, please sign and date the AOC and forward it to:

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

You may submit an alternative AOC containing the same basic provisions for our consideration. Please respond within seven (7) days of receipt to Ms. Kristi Savage-Clarke of my staff at Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, Missouri 65102 or (573) 522-4506. If we are unable to reach an agreement, the Department will forward this matter to the Attorney General's Office for appropriate legal action.

Sincerely,

WATER PROTECTION PROGRAM



Paul Dickerson, Acting Chief
Compliance & Enforcement Section

PD:ksl

Enclosure



5-21-12

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI

IN THE MATTER OF:)	
)	
Jefferson County Consolidated)	
Public Water Supply District C-1)	2011-WPCB-1157
)	
SERVE:)	
)	
Mr. Donovan Larson, Manager)	

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) number 2011-WPCB-1157 by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because the Jefferson County Consolidated Public Water Supply District Number C-1 (District) violated Missouri Clean Water Law (Law) during a water main break that occurred on August 1, 2011. Failure to comply with this AOC is, by itself, a violation of the Law 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 of the Law, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the District of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any, including future, violations of the Law, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

- A. As part of its services, the District maintains water lines that transport potable water to approximately 40,000 customers in the unincorporated communities of Barnhart, Imperial, Antonia, and Otto in Jefferson County, Missouri.
- B. On August 1, 2011, Department staff investigated a fish kill near Mastodon State Park. Staff reported traveling to the Frisco Hill Road Bridge over Rock Creek west of Imperial, Missouri, where they observed milky white/tan discolored water in the creek and dead fish to the southwest of the bridge. Staff traveled upstream of the bridge and observed the water in the stream to be clear and the aquatic life

2. On August 1, 2011, discharged water contaminants (chlorinated drinking water) 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 or applicable subsection of 10 CSR 20-7.031.

IV. AGREEMENT

- A. The Department and the District desire to amicably resolve all claims that might be brought against the District for the violations alleged above in Section III, Citations and Conclusions of Law, without the District admitting the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this Order, 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. The District, 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 five hundred dollars and no cents (\$500.00). The payment shall be in the form of a certified check or cashier's check made payable to "Jefferson County Treasurer, as custodian of the Jefferson County School Fund." The check in the amount of five hundred dollars and no cents (\$500.00) is due and payable upon execution of this AOC by the District. 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. The District agrees to pay the State's investigative costs, damages, and the value of the fish killed, in the amount of four-hundred sixty dollars and eighty-two cents (\$460.82) in the form of a certified check or cashier's check made payable to the "*State of Missouri*." The check in the amount of four-hundred sixty dollars and eighty-two cents (\$460.82) is due and payable upon execution of this AOC by the District. The check shall be delivered to:

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

- E. Within 30 days execution of this AOC, the District shall submit to the Department, for review and approval, a written response plan for use by District employees

Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176
Jefferson City, Missouri 65102-0176

- G. Nothing in this AOC forgives the District from future noncompliance 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.
- H. 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 AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, expressed or implied.
- I. The effective date of the AOC shall be the date the Department signs the Order.
- J. The District agrees to comply with the terms and conditions of its Permit, the Law, Chapter 644, RSMo, and the implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC number 2011-WPCB-1157, the District waives any right to appeal, seek judicial review, or otherwise challenge this order pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC number 2011-WPCB-1157 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

VI. CORRESPONDENCE AND DOCUMENTATION

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

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

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

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

Mr. Samuel D. Leake, Commissioner
Missouri Clean Water Commission
41690 Harrison Trail
Perry, MO 63462

Mr. John Cowherd, Commissioner
Missouri Clean Water Commission
1303 Deer Lane
Mount Vernon, MO 65712

Mr. Buddy Bennett, Commissioner
Missouri Clean Water Commission
7361 Summer Azure Lane
Higginsville, MO 64037

Ms. Wallis Warren, Commissioner
Missouri Clean Water Commission
2671 Jefferiesburg Road
Beaufort, MO 63013

Mr. Dennis Wood, Commissioner
Missouri Clean Water Commission
P.O. Box 112
Kimberling City, MO 65686

SEP Budget Detail:

	<u>April 2012 event</u>	
Post card printing and postage.		\$4,754.00
Newspaper advertisement-Jeff Co Leader-1/2 page		\$ 518.00
Drugstore brochures / handouts		\$ 500.00
Website maintenance (set-up and two updates)		\$ 105.00
	<u>October 2012 event</u>	
Newspaper advertisement-Jeff Co Leader-1/2 page		\$ 518.00
Drugstore brochures / handouts		\$ 500.00
Website maintenance (set-up and two updates)		\$ 105.00
	<u>April 2013 event</u>	
Newspaper advertisement-Jeff Co Leader-1/2 page		\$ 518.00
Website maintenance (set-up and two updates)		\$ 105.00
Total Cost		\$7,263.00

Any labor costs involved with the above activities will be absorbed by the District

Memo

To: Board of Directors
From: Ron Smith
CC:
Date: January 29, 2009
Re: Alleged Fish Kill Incident – Chronology of Events

July 20, 2007: Fish kill in Glaize Creek and Moss Hollow Creek reported by Mr. Jay and Sandy Burnett (local residents). Missouri Department of Conservation personnel investigated the incident and revealed an apparent sewer line break close to the bridge over Moss Hollow Road. MDC personnel reported a fish kill of 14,417 fish.

July 20, 2007: A water main break occurred around 6:00 am on Moss Hollow Road near the creek. An estimated 30,000 gallons of water was lost before shutting down the main. The break was repaired around noon that day.

September 4, 2007: A subsequent investigation of the incident was conducted by Department of Natural Resources Mr. Stuart Bean . Mr. Bean was accompanied by Mr. Fred Dishner, Field Supervisor of Inspectors, of the Jefferson County Public Works Department. This is the first time C-1 is made aware of the incident.

October 18, 2007: C-1 receives a letter from the Department of Natural Resources, Mr. Mike Struckhoff, Regional Director, informing C-1 that chloramines used as a disinfectant for drinking water, can also become a contaminant if discharged to the waters of the State. Mr. Struckhoff informed C-1 that this issue was being sent to the Water Pollution Branch – Enforcement Unit for review and possible enforcement action.

March 20, 2008: C-1 receives a letter from the Department of Natural Resources, Mr. Ed Galbraith, Director of the Water Protection Program. The letter informed C-1 that the DNR has documented violations of the Missouri Clean Water Law by C-1 as a result of a water main rupture occurring on July 20, 2007. To resolve these violations, C-1 was required to pay the state for reimbursement of costs sustained during the investigation and payment of damages to cover the value of the fish killed. Secondly, C-1 was required “ to prepare a written response which demonstrates the District has or will develop the technical, managerial and financial capability to manage assets in a manner that minimizes the risk of line failure.” The value asessed to the fish was \$2,183.50 and investigative costs were determined to be an additional \$1,644.20.

April 23, 2008: On behalf of the Board of Directors, C-1 legal counsel (Wegmann and Associates) sends letter to DNR stating that “C-1 has no intention to negotiate with DNR with respect to this incident.”

June 12, 2008: Phone conversation between C-1 Manager Ron Smith and DNR Director Galbraith. Mr. Smith requests a copy of the DNR / MDC investigative report.

June 16, 2008: C-1 receives a copy of the investigative report along with a letter from Mr. Galbraith. In the letter, Mr. Galbraith reiterates that in order to settle out of court, C-1 will need to pay costs and damages in the amount of \$3,827.70 as well as the requirement to demonstrate the District's technical, managerial and financial capability.

June 18, 2008: At the request of the C-1 Board of Director's, Manager Smith sends an offer to DNR to pay for the investigative costs of this incident which have been presented as \$1,644.20. Since the incident was of an accidental nature and in the District's eyes, not sufficient evidence to prove conclusively that the fish were killed by the main break, no payment for damages was included in the offer.

July 9, 2008: C-1 receives letter from DNR – Mr. Galbraith. DNR is willing to allow language in a proposed settlement that would allow the District to not admit fault or liability. However, DNR rejects the monetary offer made by C-1 and states they are unwilling to forego the value of the fish killed and the requirement for the District to prove capability.

July 15, 2008: C-1 counsel sends letter to DNR advising DNR that it appears that both parties have reached an impasse and that all future correspondence should be sent to the District's legal counsel.

November 28, 2008: C-1 receives a letter from the Attorney General of Missouri stating that this matter had been referred to him by the DNR and that he was representing the State in this matter. In order to avoid litigation over public policy issues, Assistant Attorney General Duggan asked the District to "reconsider the DNR request to make the state whole by reimbursing its out-of-pocket investigative costs and the value of the destroyed fish." The Assistant Attorney General suggests in the letter to C-1 counsel that " your client's acceptance of the risks of injury to the environment that comes with the operation and maintenance of the drinking water system, without admitting fault or liability for penalties commonly associated with misfeasance or malfeasance, seems to be the best course for all concerned."

January 12, 2009: C-1 sends letter to the Assistant Attorney General along with payment in the amount of \$3,827.70 . The District does not acquiesce on this matter and payment is being made for strictly financial considerations.



Animal Waste Pollution

Introduction:

Missouri is among the nation's leaders in livestock production. This production helps feed the people of the state and the world. However, incidents of animal waste pollution can be devastating to our economically and recreationally important waterways. This Fact Sheet provides general information about animal waste pollution in Missouri's rivers and lakes, and guidance to those interested in obtaining more information.

Pollution History:

From 1983 to 1997, 343 Agricultural Pollution Incidents affecting Missouri waters were investigated by the Missouri Department of Natural Resources and the Missouri Department of Conservation. The incidents caused 144 known fish kills. Data from the investigations show:

- Animal waste caused 234 (68%) of the 343 agricultural pollution incidents.
- Animal waste pollution caused 94 fish kills in 199 miles of streams.

Lessons in Leniency

In the "spirit of compromise," state environmental regulators routinely reduce pollution penalties assessed against large animal farms.

By GAVIN OFF Special to the Tribune

Published Sunday, May 6, 2007

JEFFERSON CITY - For years, the Missouri Department of Natural Resources has levied civil penalties against large water-polluting animal farms, only to later reduce the penalties to about a quarter of the original amount, records show.

Although department officials say the downward adjustments to the civil penalties are all part of the negotiating process, critics call them handouts to industrial agriculture and slaps on the wrist to some Missouri polluters.

Examples of the consistent reductions in penalties are contained in more than 4,000 pages of department documents made available through Missouri's Open Meetings and Records Law. The records show the department often made the reductions in "the spirit of compromise."

The record of penalty cuts provides a sample to help measure DNR's regulatory performance at a time when some state legislators want to increase the agency's role in governing concentrated animal feeding operations, known as CAFOs. These are large-scale farms housing thousands of animals.

The state Senate recently considered a controversial bill that would have nullified local health ordinances governing CAFOs and would have essentially made DNR the sole regulatory authority over those operations. The bill died in the face of opposition from farmers, environmentalists and county officials.

Some opponents said the state regulatory agency could not protect local residents from the potential of air, land and water pollution from the large agricultural operations. A special interim legislative committee will study the large animal operations over the summer.

One place for the committee to start its work is an examination of CAFO violation records.

Since 2000, DNR's central office in Jefferson City has compiled more than 20 violations of state permits and the Missouri Clean Water Law by 12 animal farms. The records reviewed in Jefferson City represent only a sample of CAFO violation reports. Other violations are recorded in regional offices.

Of the records reviewed in Jefferson City, one case is still under investigation. Another case has been settled between the agency and the CAFO without negotiating a civil penalty. DNR never issued a penalty for a third animal farm because the CAFO immediately corrected the problem, reports showed.

But for nine farms, the department slashed the civil penalties it once deemed appropriate. Some penalties were reduced several times - all by thousands of dollars.

DNR records show the department reduced the nine civil penalties from a total of \$167,000 to \$45,000. Farms also paid for damages and the state's investigative costs when such costs arose. In agreeing to the settlements, the animal farms' owners admitted no wrongdoing.

Problems cited in the documents include spilling hog waste into rivers, spraying manure onto public roads, operating without state permits, failing to turn in annual water-monitoring reports and leaving a "pool of dead animal juices" at a farm composter.

"In the last two years, the DNR is really a joke out here in the countryside," said Rhonda Perry, program director for the Missouri Rural Crisis Center. "I don't think anybody out here trusts the DNR to do their job."

POLLUTION PENALTIES

DNR's responsibility is to protect Missouri's environment. Among its many duties, the agency enforces regulations and permits dealing with CAFOs.

Doyle Childers, department director, said DNR negotiates penalties with CAFO operators after department officials impose the penalties and farmers present the state with mitigating evidence. Such evidence, he said, shows farms could not entirely control the situation.

For example, a pump might have malfunctioned, sending hog waste into a nearby creek, or torrential rains might have washed chicken litter onto a neighboring property.

Childers said the negotiations and the resulting reductions are a "standard practice."

He said the bottom line is teaching CAFO operators to correct their violations, prevent future mishaps and help them become more environmentally friendly businesses. If the department could do that with limited penalties, so be it, Childers said.

"One of the things I would want to look at is what are the circumstances of the violations," Childers said. "Is it something that couldn't be quickly repaired? Are they trying to resolve it?"

Childers said department officials weigh additional factors, including a farm's violation history. The department tends to go easier on first-time offenders, he said, and treats repeated offenders "much less friendly."

DNR records might suggest otherwise.

Murphy Family Farms' Bellamy Pyramid operation consists of three hog

farms near Nevada in Vernon County in southwest Missouri. In November 2005, the farms housed about 23,000 hogs.

A farm irrigation pipe broke in August 2003, spilling about 5,000 gallons of hog waste onto the property, according to a settlement agreement among Murphy Family Farms, the attorney general's office and DNR.

Less than two months later, a 1,000-gallon spill happened at the same spot.

"The above listed violations are significant because they have an adverse impact on the quality and beneficial uses of the receiving stream, an unnamed tributary of Walnut Creek," wrote Ed Galbraith, director of DNR's Water Protection Program, in a letter to Murphy Family Farms.

Then, in July 2004, another irrigation pipe ruptured, this time sending about 20,000 gallons of hog waste into a neighbor's pond and the tributary, the records said. The spill flooded the pond with 294,000 gallons of a waste/rainwater mix.

The report said the three violations lasted a total of six days.

Under the Clean Water Law, the state could fine farms as much as \$10,000 a day for each violation, or in this case \$60,000.

DNR said the spills' potential harm was "moderate" and assessed the damage at \$30,000.

In a letter from the department's compliance and enforcement section, however, DNR later cut the assessment, saying a \$25,000 penalty "is appropriate for this matter."

Later, the department reduced the penalty again.

After negotiations - at which time CAFO operators said the spills had no environmental effect and the farm had spent more than \$500,000 to prevent future spills - Murphy Family Farms and DNR settled on a \$6,000 civil penalty.

The settlement measured 24 percent of the original penalty of \$25,000 and 10 percent of the maximum allowed under Missouri law.

Civil penalties are supposed to act as a deterrent against future violations. Environmentalists and residents said reducing the penalties merely perpetuates violations.

"It's like getting charged with a \$100 speeding ticket, and they drop it down to \$1," said Melody Torrey, a Unionville resident who lives next to a hog farm. "Would that make you stop speeding?"

FINES REDUCED

Childers, a former state lawmaker whom Gov. Matt Blunt appointed to head DNR in 2005, said the cuts in penalty amounts are a balancing act. Childers has said in the past that while enforcing the state's environmental laws, he also wants to help develop Missouri's economic development potential.

If CAFO operators contain a waste spill to the farm, Childers said, DNR would likely reduce the civil penalty. DNR is more demanding of CAFOs whose violations severely affect neighboring properties, he added.

Records show civil penalties are reduced even when they harm state waters or affect neighbors.

As of last year, the Simpson-Zeysing Farm in Caldwell County in northwest Missouri was home to 9,000 nursery hogs. The animal farm sits just off an unnamed tributary to Kettle Creek.

In April 2005, the farm was cited for polluting state waters, this time after hog waste - spread on the land as fertilizer - washed into the tributary. The discharge killed 4,117 fish and polluted 4.5 miles of stream for at least three days, records show.

DNR cited the farm for five violations.

"Although this is the only incident of record, it is particularly egregious because it included a fish kill, and it appears Mr. Simpson was negligent with maintaining best management practices during wastewater application," wrote Mary Ann Redden, a DNR environmental specialist, in the July 2005 report.

After the CAFO owner, Byron Simpson, said he could not afford to pay the civil penalty, DNR cut its initial \$12,000 penalty to \$4,000.

In the final settlement agreement, DNR cut the penalty to \$2,000. The owner also paid for damages and DNR's investigation, which totaled \$3,429.

In all, the department cut the civil penalty by 83 percent.

Terry Spence, a Unionville cattleman who has fought CAFOs for the last 12 years, said such reductions show Missouri is a CAFO-friendly state.

"They know up front that they're not going to get harmed," Spence said of CAFOs that break state laws. "It's just going to be a little slap on the hand."

Similar reductions unfolded for nearly all of the 12 farms that were issued violation notices and recorded in the department's Jefferson City office.

? Fletcher Hog Farm, near Sweet Springs in Saline County: According to an August 2002 settlement agreement, hog waste discharged into an unnamed tributary of Jordan Creek, killing 3,817 fish. The department assessed the penalty at \$28,000 but because of the size of the farm, levied only a \$12,000 penalty. DNR cut the penalty to \$2,500, the settlement agreement said.

? Forkner Farms in Vernon County in southwest Missouri: According to an August 2003 notice, hog waste discharged into Douglas Branch. In a report

the next year, the department declined to issue a civil penalty because the CAFO immediately corrected the problem.

? Delbert Fry Farm in Morgan County: According to an April 2002 letter from Fry, the department sought a \$20,000 penalty after Fry discharged hog waste into an unnamed tributary of Flat Creek. DNR cut the civil penalty in half but also said it could be cut down to \$2,000, provided that the farmer complied with specific conditions.

? Tompkins Livestock Farms in Miller County: According to a July 2004 report, the department assessed an \$8,000 penalty against the farm for discharging hog waste into an unnamed tributary of South Moreau Creek. DNR cut the penalty to \$2,000, the settlement agreement said.

? Climax II Hog Farm near Ashley in Pike County: According to a July 2004 letter, the department sought a \$60,000 civil penalty against the farm for discharging hog waste into parts of the Cuivre River. DNR cut the penalty to \$20,000.

? Glen Scott Poultry in Barry County in southern Missouri: According to a DNR report last May, the department sought a \$10,000 civil penalty against the farm for operating without a valid permit and failing to turn in annual water-monitoring reports for seven straight years. DNR cut the entire penalty and sought only a \$300 permit fee, a department letter said.

? Diamond T Farm, Miller County: According to DNR letters in March 2006 and June, the department cut a civil penalty from \$12,000 to \$1,500. The CAFO had discharged hog waste into an unnamed tributary of Blythes Creek.

? Niebruegge Farm, Cooper County: According to a DNR report last May, the department and the farm agreed to a \$3,500 civil penalty after two animal waste discharges. Under state law, the penalty could have reached \$10,000 a day for each violation.

? Kip Cullers Poultry in Barry County: According to an August DNR report, the department, "in the spirit of compromise," cut a civil penalty from \$8,000 to \$1,000. The CAFO was operating without a valid permit and had failed to turn in annual water-monitoring reports for six straight years.

The list of reductions surprised even those who already had little confidence in DNR. "They really are pretty shocking," said Perry, of the Rural Crisis Center. "I think it's totally clear that companies believe it pays to be a polluter because it's just a cost of doing business."

NEGOTIATION STRATEGY

Childers stood by DNR but said the department's system of starting with a large demand for a civil penalty and then negotiating the settlement downward could change.

Although he said the mere threat of a hefty penalty could scare some CAFOs

into compliance, Childers said if the department is settling for fractions of the initial penalty, "you've probably started out too high for negotiating purposes."

"In fact, there's been discussion about whether we're starting out too high with that, if you ought to have a more realistic number and less flexibility." Childers said. "That's been an internal discussion."

Kevin Mohammadi, compliance and enforcement chief of DNR's Water Pollution Control Branch - which oversees the Clean Water Law and Missouri Clean Water Commission regulations - said he was unaware of such discussions.

He's also against the idea.

"You really can't" start lower, Mohammadi said. "We use an administrative penalty template that is in the regulation. We use that to determine the amount of the penalty."

Mohammadi said DNR's settlement agreements are adequate and that he couldn't recall any case in which the department didn't offer to negotiate a civil penalty.

"That doesn't mean you let them all go easy," said Charles Speer, a Kansas City attorney who represents people who have filed complaints against CAFOs.

Speer has tried dozens of CAFO cases, including more than 200 current nuisance odor cases against hog producer Premium Standard Farms. He said DNR has failed to keep CAFO pollution in check.

A former DNR employee also questioned the department's ability to regulate CAFOs.

The department is simply understaffed and underfunded, said Jim Vaughn, 61, of Dexter. Vaughn spent more than 20 years as a DNR geologist, inspecting more than 2,000 hog lagoons and wastewater sites statewide. He retired in 2002.

Too often, DNR officials failed to inspect how CAFO lagoons were built, Vaughn said. They left that to engineering firms and corporate representatives.

"If enforcement is too lax - the fines, in other words - there's probably not much incentive for them to pay attention to the DNR," Vaughn said. "Until CAFO companies and owners of other major livestock operations become highly responsible for environmental quality, you simply have to have people out there looking over their shoulder."

But given the numbers, that could be difficult.

The department now employs 14 water-quality inspectors. Missouri is home to 511 CAFOs.

DNR inspects the larger CAFOs sometimes once a year. Smaller CAFOs

monitor themselves, a DNR official said.

"I think the counties have decided to take the matter into their own hands because they feel the state has failed them," Speer said.

Some 20 Missouri counties have zoning and health ordinances governing everything from CAFO livestock odor to setbacks between CAFOs and neighbors' homes. The bill considered earlier this session in the state Senate would have nullified those ordinances and would have turned most regulatory authority over CAFOs to DNR.

Supporters said the change would provide uniformity of enforcement. Opponents said it would weaken local health protections.

Sen. Chris Koster, R-Harrisonville, sponsored the bill, saying that if regulations varied from county to county, it could drive farmers out of state to locations where laws are unified and more lenient.

Koster said he quickly became aware of the rift between rural Missourians and DNR. Now he's calling for legislative action.

"Policymakers in Jefferson City need to take note of that frustration and ensure that the civil enforcement duties of the Department of Natural Resources are active and effective in their environmental role," Koster said.

Koster said he supports a legislative committee review of DNR's effectiveness. But even if there's a legislative review, residents and environmentalists could still bear some of the burden of policing large-scale animal farms.

Some DNR notices stem from local residents reporting the problem.

For example, an anonymous call prompted a March 2004 inspection of Tompkins Livestock Farms, records showed.

The inspector's attention turned to a nearby creek, which "contained brown and black colored water and smelled of hog manure."

The hog waste polluted more than two miles of a local stream, a DNR report said.

But the department cut the penalty by 75 percent, suggesting to some that the state had folded to industrial animal farms.

"They need to fine them the full amount, instead of a piddling amount," said Torrey, the resident of Unionville. "In my opinion, it's saying Missouri is easy."

Gavin Off is a graduate student at the University of Missouri-Columbia School of Journalism. Reach him via e-mail at editor@tribmail.com.

STATE OF MISSOURI Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director
DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

SEP 18 2012

Mr. Donovan Larson
Jefferson County Water District No. C-1
P.O. Box 430
Barnhart, MO 63012

Dear Mr. Larson:

This correspondence is in response to the presentation you made to the Missouri Clean Water Commission (Commission) at their September 5, 2012, meeting. During this meeting you requested that the Commission grant the Water Utility industry a variance from civil penalties for violations of the Missouri Clean Water Law (Law) that occur when chlorinated drinking water is released due to the failure of water mains. The Commission appreciates that you took time to attend the meeting and make your presentation, and we examined the matter.

As a practical matter, a variance has a very specific meaning under the Law, and a variance would not be appropriate for the relief you are requesting. However in the broader sense we clearly get your point. Public utilities are similar to other governmental agencies in that their sole purpose is to provide service and do not profit from activities that lead to pollution. In fact, just the opposite occurs and line breaks detract from the district's ability to do other productive, even possibly preventative, work.

Given the wide variety of pollution incidents that come before the Department, we do not believe it would be appropriate to draw general conclusions about any incident based solely on the type of responsible party. The extent of the pollution as well as the response and other factors vary widely across incidents, and the resolution of each may be somewhat unique.

The Water Protection Program evaluates each incident that results in a violation on a case by case basis and applies a gravity based penalty assessment to calculate an appropriate civil penalty. The penalty assessment considers the degree of the seriousness of the violation and the extent of deviation from the Law and its implementing regulation as well as good faith efforts by the responsible party. The civil penalty is negotiable and may be reduced if information is presented that warrants further reduction of the penalty.

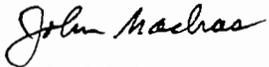


Mr. Donovan Larson
Page 2

Again, thank you for sharing your thoughts with the Commission.

Sincerely,

WATER PROTECTION PROGRAM



John Madras
Director

JM:pdw

c: Ms. Dorothy Franklin, St. Louis Regional Office
Mr. Steve Sturgess, Public Drinking Water Branch
Missouri Clean Water Commission