

- C. On the evening of August 22, 2011, the Department was notified that a model AT-502B Air Tractor Inc. crop dusting airplane (plane) owned by Mr. Malone and piloted by Mr. Zachery S. Brimer crashed during take-off approximately ¼ mile north of a bridge on Route HH into a tributary to Ash Slough Ditch (tributary), and that jet fuel had entered the waterway. The Department's Environmental Emergency Response (EER) Unit responded to the site that evening and observed the plane upside down in the tributary, petroleum absorbent booms deployed downstream of the crash, and a large number of dead fish present in the tributary. The investigation was suspended due to limited lighting.
- D. On August 23, 2011, Missouri Department of Conservation (MDC) agents investigated the site of the fish kill and observed large numbers of dead fish in the tributary. On or about September 7, 2011, the Department received the MDC Report of Pollution Investigation and Fish Kills (Report) No. 2011023 which stated that the fish kill had been caused by jet fuel released into a tributary to Ash Slough Ditch as a result of an airplane crash. In the report, MDC agents noted that the fishkill extended 3.8 miles within the tributary and stated that four thousand eight hundred twenty (4,820) fish, with an estimated replacement cost of seven hundred ninety-seven dollars and eighty-three cents (\$797.83), were killed.
- E. On December 12, 2011, the Department issued a Notice of Violation to Mr. Malone as a result of the Department's August 23, 2011, investigation of the fish kill that occurred in the tributary.
- F. As a result of the above investigation, the State of Missouri incurred costs for investigation, damages, and the value of the fish killed in the amount of two-thousand nine hundred eighty-six dollars and forty-one cents (\$2,986.41).
- G. Section 644.096, RSMo , authorizes the State, or any political subdivision or agency, to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Section 644.006 to 644.141, RSMo, and the costs and expenses of restoring any waters of the State to their condition as they existed before the violation, sustained by the State because of the violation.
- H. Section 644.076.1, RSMo, makes it unlawful to violate the Law and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

III. CITATIONS AND CONCLUSIONS OF LAW

The Department finds that the following violations of the Law, Chapter 644, RSMo, and its implementing regulations have occurred:

1. On August 22, 2011, caused pollution of an unnamed tributary to Ash Slough Ditch, waters of the state, or placed or caused or permitted to be placed water contaminants in a location where they are reasonably certain to cause pollution of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1 RSMo.

2. On August 22, 2011, discharged water contaminants into an unnamed tributary to Ash Slough Ditch, 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.

IV. AGREEMENT

- A. The Department and Ag-Air Inc. desire to amicably resolve all claims that might be brought against the Ag-Air Inc. for the violations alleged above in Section III, Citations and Conclusions of Law, without the Ag-Air Inc. 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. Ag-Air Inc., 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 two thousand dollars and zero cents (\$2,000.00). The payment shall be in the form of a certified check or cashier's check made payable to "New Madrid County Treasurer, as custodian of the New Madrid County School Fund." The check in the amount of two thousand dollars and zero cents (\$2,000.00) is due and payable upon execution of this AOC by Ag-Air Inc. 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. Ag-Air Inc. agrees to pay the State's investigative costs, damages, and the value of the fish killed, in the amount of two thousand nine-hundred eighty six dollars and forty-one cents (\$2,986.41) in the form of a certified check or cashier's check made payable to the "*State of Missouri*." The check in the amount of two thousand nine-hundred eighty six dollars and forty-one cents (\$2,986.41) is due and payable upon execution of this AOC by Ag-Air Inc. The check shall be delivered to:

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P.O. Box 477
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- E. Nothing in this AOC forgives Ag-Air Inc. 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.

- 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 AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, expressed or implied.
- G. The effective date of the AOC shall be the date the Department signs the Order.
- H. Ag-Air Inc. agrees to comply with the terms and conditions of the Law, Chapter 644, RSMo, and the implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC number 2012-WPCB-1200, Ag-Air Inc. 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 2012-WPCB-1200 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

Agreed to and Ordered this 25th day of July, 2012



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

Agreed to and Ordered this 12 day of July, 2012



Peter C. Malone, Owner
Ag-Air Inc.

c. Ms. Diane Huffman
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