



- B. On March 27, 2009, the Department issued Missouri State Operating Permit number MO-R240266 (Permit) to the Cooperative for operation of the Facility. The Permit authorizes stormwater discharges from the Facility and provides effluent limitations for discharges from secondary containment. Pursuant to the Permit, the Cooperative must collect a sample of each batch of water from any secondary containment area and operation containment area used for bulk agrichemicals prior to any discharge to determine compliance with the permitted effluent limitations. The receiving stream for stormwater discharges from the Facility is Whitcomb Branch.
- C. Whitcomb Branch and its tributaries are waters of the state as the term is defined by Section 644.016 (26), RSMo.
- D. Agricultural chemicals, including herbicides, are water contaminants as the term is defined in Section 644.016(23), RSMo.
- E. The Cooperative maintains Volley ATZ Corn Herbicide at the Facility, and according to the Material Safety Data Sheet (MSDS) the herbicide is composed of 24.2% atrazine, which is moderately toxic to aquatic organisms. The MSDS also indicates that the herbicide is composed of 32.6% acetochlor, which is highly toxic to aquatic organisms. Pursuant to the Permit, the effluent limitation for atrazine is 15 µg/L. The Permit also provides an effluent limitation of 100 µg/L for the herbicide metribuzin.
- F. On April 25, 2012, Missouri Department of Conservation (MDC) staff received an environmental concern reporting that dead fish, frogs, and snakes were observed in Whitcomb Branch in Troy, Missouri. During the complaint investigation, MDC staff observed 981 dead fish, 2 dead frogs, 2 dead snakes, 28 dead crayfish, and 485 dead tadpoles in the stream, and determined based on the myriad species represented that the fishkill was likely the result of pesticide contamination. MDC staff contacted the Department to inform them of the fishkill, and Department staff conducted a site investigation on the same day. During the investigation, Department staff observed dead fish and pools of white liquid adjacent to the Facility. Department staff contacted the Cooperative's General Manager, Mr. Jeff Geisendorfer, and learned that a valve had opened on a temporary storage tank sometime between Friday, April 20 and Monday, April 23, 2012, when it was discovered. Mr. Geisendorfer stated that the tank contained 19.5 gallons of Volley ATZ Corn Herbicide and 3.75 gallons of atrazine. Department staff instructed Mr. Geisendorfer to control the discharge with earthen berms and absorbent socks, and clean up the spill by pumping the pools of chemical and removing heavily contaminated soil. Department staff walked along Whitcomb Branch to assess the extent of the damage caused by the discharge. Staff observed live fish in Whitcomb Branch upstream from the Facility, and dead fish approximately half mile (0.5 mi) and one mile (1 mi) downstream from the Facility. Approximately 1.3 miles downstream of the Facility staff observed live, dead, and stressed fish in the stream. During the investigation, Department staff collected three (3) water samples from Whitcomb Branch for analyses to confirm the source of the

chemical contaminant. A sample upstream of the Facility had an atrazine concentration of 0.70 µg/L and a metribuzin concentration of 1.06 µg/L. A sample collected adjacent to the Facility had an atrazine concentration of 5050 µg/L and a metribuzin concentration of 6950 µg/L, which exceeds the permitted effluent limits for both herbicides. A sample collected approximately 1.3 miles downstream of the Facility had an atrazine concentration of 190 µg/L and a metribuzin concentration of 375 µg/L.

- G. On April 26, 2012, Department staff performed a surveillance visit at Whitcomb Branch to determine if the chemical spill was still stressing aquatic life. Department staff observed no live fish approximately one mile (1 mi) downstream from the Facility. Live and dead fish were observed approximately one and a quarter miles (1.25 mi) and two miles (2 mi) downstream from the Facility. No dead fish were observed approximately two and a quarter miles (2.25 mi) downstream from the Facility.
- H. On April 30, 2012, Department staff conducted a follow-up visit at the Facility and observed no white liquid chemical on the ground.
- I. On May 9, 2012, the Department issued the Cooperative Notice of Violation (NOV) number 3004 SL for violations observed during the April 25, 2012, site investigation. The transmittal letter required a written response outlining actions taken to correct the violations within 15 days receipt of the NOV.
- J. On May 23, 2012, the Department received a written response from Mr. Geisendorfer explaining that the Cooperative recovered and land applied contaminated soil on corn crop land, and updated the Facility's spill procedures to include instructions and contact information for the Department. The letter also stated that the Cooperative was considering installing earthen stormwater basins and a temporary storage tank with locking valves inside the Facility's operation building to prevent future chemical discharges.
- K. On July 30, 2012, the Department received a written response from Mr. Geisendorfer stating that the Cooperative completed remediation measures at the Facility, including construction of an earthen berm and a sediment retention area near the north property boundary of the Facility.
- L. As a result of the above investigations, the Department incurred costs and expenses for staff time in the amount of \$2,866.36. In addition, MDC incurred similar costs and expenses in the amount of \$1,082.07, including the value of aquatic life killed.
- M. 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.

N. 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. CONCLUSIONS OF LAW

Violations of the Law and its implementing regulations alleged herein and found to have been committed by the Cooperative at the Facility are as follows:

1. On April 25, 2012, caused pollution of Whitcomb Branch, 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.
2. On April 25, 2012, discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards general and specific criteria 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.
3. Failed to report a discharge as required by Standard Condition, Part I, Section B, Paragraph 2b in the Permit, in violation of Section 644.076.1, RSMo.

### IV. AGREEMENT

- A. The Department and the Cooperative desire to amicably resolve all claims that might be brought against the Cooperative for the violations alleged above in Section III, Conclusions of Law, without the Cooperative 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 AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of the Cooperative under this AOC. If the Cooperative sells or otherwise transfers the Facility, then the Cooperative shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of the Cooperative under this AOC in writing. In such event, the Cooperative shall provide thirty (30) days prior written notice of such assumption to the Department.
- C. The Cooperative, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of four-thousand dollars and zero cents (\$4,000.00). The payment shall be in the form of a certified check or cashier's check made payable to "Lincoln County Treasurer, as custodian of the Lincoln County School Fund." The

check in the amount of four thousand dollars and zero cents (\$4,000.00) is due and payable upon execution of this AOC by the Cooperative. 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 Cooperative agrees to pay the state's investigative costs, damages, and the value of the aquatic life killed, in the amount of three thousand nine hundred forty-eight dollars and forty-three cents (\$3,948.43) in the form of a certified check or cashier's check made payable to the "*State of Missouri*." The check in the amount of three thousand nine hundred forty-eight dollars and forty-three cents (\$3,948.43) is due and payable upon execution of this AOC by the Cooperative. The check shall be delivered to:

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

- E. The Cooperative agrees to verbally notify the Department within twenty-four (24) hours from the time the Cooperative becomes aware of any unpermitted discharge from the Facility and submit a written response to the Department's St. Louis Regional Office at 7545 South Lindbergh, Suite 210, St. Louis, MO 63125 within five (5) days from the time the Cooperative becomes aware of the discharge explaining the corrective actions taken to resolve the discharge and prevent future discharges.
- F. Within thirty (30) days of the effective date of this AOC, the Cooperative agrees to provide secondary containment structures to all hazardous chemicals stored at the Facility, including inside and outside the operation building, and submit a written report to the Department documenting that secondary containment is provided for all chemicals stored at the Facility at all times.
- G. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Cooperative shall notify the Department by telephone or electronic mail i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; iii) and proposing an extension to the deadline. Within five (5) days of notifying the Department, the Cooperative shall submit to the Department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the Cooperative's right to

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

- H. Should the Cooperative fail to meet the terms of this AOC, including the terms set out in Paragraphs C through F, the Cooperative shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

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

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

- I. No portion of the stipulated penalties paid pursuant to this AOC may be used to reduce the Cooperative's federal or state tax obligation.
- J. Nothing in this AOC forgives the Cooperative from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forego pursuing by any legal means any noncompliance with the laws of the State of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those within are expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.
- K. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.
- L. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to the Cooperative for its records.
- M. The Cooperative shall comply with the Law, Chapter 644, RSMo, its implementing regulations, and all requirements and conditions of the Permit at all times in the future.

V. **RIGHT OF APPEAL**

By signing AOC No. 2012-WPCB-1215, the Cooperative consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this Order, pursuant to Sections 621.250, 640.010, 644.056.3, 640.013, 644.145, 644.079.2, RSMo, Chapter 536 RSMo, 10 CSR 20-1.020, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

VI. **CORRESPONDENCE AND DOCUMENTATION**

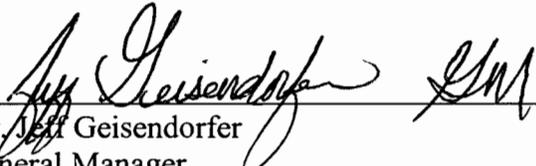
Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

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

Agreed to and Ordered this 15<sup>th</sup> day of October, 2012.

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

Agreed to and Ordered this 21 day of September, 2012.

  
\_\_\_\_\_  
Mr. Jeff Geisendorfer  
General Manager  
Lincoln County Farmers Cooperative, Inc.

Copies of the foregoing served by certified mail to:

Mr. Jeff Geisendorfer  
Lincoln County Farmers Cooperative, Inc.  
811 East Cherry Street  
Troy, MO 63379

CERTIFIED MAIL #

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

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

Mrs. Dorothy Franklin, Director  
Saint Louis Regional Office  
7545 S. Lindbergh, Suite 210  
St. Louis, MO 63125

Dr. Samuel M. Hunter, Chair  
Missouri Clean Water Commission  
P O Box 984  
216 Tanner Street  
Sikeston, MO 63801

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

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

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

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

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WATER PROTECTION PROGRAM

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

Mr. Buddy Bennett, Commissioner  
Missouri Clean Water Commission  
1922 N Main Street  
Higginsville, MO 64037-1527

