

III. FINDINGS OF FACT

- A. St. Joe State Park (Site) is a part of the Missouri Department of Natural Resources (Department) Division of State Parks (DSP) and is located in the NE¼, NW¼, Sec. 18, T36N, R5E, Park Hills, St. Francois County, Missouri. The Site is located in the old “Lead Belt” region of southeast Missouri on the site of the former Federal Lead Mining Company, which ceased mining operations in 1972 and donated the property to the State of Missouri for the establishment of a state park in 1976.
- B. Lead tailings are a byproduct of mining operations and cover a large portion of Site. The tailing area is partially controlled with a stabilization dam and tailing ponds. Storm water runoff from the tailings area discharges into the Big River Watershed, which includes Flat River Creek.
- C. The Department issued Missouri State Operating Permit No. MO-0097993 (Permit) to DSP with an effective date of June 17, 2011. Pursuant to the conditions and requirements of the Permit, DSP is authorized to discharge treated domestic wastewater from outfall No. 001 to the Harris Branch of Flat Creek and stormwater runoff from outfall No. 002 to the Shaw Branch of Flat River Creek.
- D. The Permit requires DSP to collect and chemically analyze samples of stormwater discharges from outfall 002 for Settleable Solids (SS), total suspended solids (TSS), Total Recoverable Lead (TRL), Total Recoverable Zinc (TRZ), and Total Recoverable Cadmium (TRC) and submit the results of the analysis to the Department on its monthly Discharge Monitoring Reports (DMRs). The Permit includes interim effluent limitations that will be in effect from June 17, 2011 to June 16, 2014 and final effluent limitations that become effective June 17, 2014. The interim effluent limitations require stormwater discharges to comply with daily maximum and monthly average effluent limitations of 1.0 milliliter per liter (ml/L) for SS, 10 milligrams per liter (mg/L) for TSS, 29 micrograms per Liter (ug/L) for TRL, 440 ug/L for TRZ and 17 mg/L for TRC. The final effluent limitations will require stormwater discharges to comply with daily maximum effluent limitations of 1.0ml/L for SS, 5.0 mg/L for TSS, 12.44 ug/L for TRL, 207.7 ug/L for TRZ and 0.75 mg/L for TRC. The final effluent limitations will also require the stormwater discharges to comply with monthly average effluent limitations of 6.2 ug/L for TRL, 103.5 ug/L for TRZ and 0.37 mg/L for TRC.
- E. Flat River Creek and its tributaries, which include the Harris and Shaw Branches, are “waters of the state” as defined in Section 644.016(26), RSMo.
- F. On March 26, 1991, the Department issued Abatement Order No. 790 to DSP for failing to eliminate storm water discharges of lead mine tailings as required by Part C, Schedule of Compliance, of the Permit issued on February 12, 1988, and causing pollution of Shaw Branch and Flat River, waters of the state. Abatement Order No. 790 required Parks to complete the following:

- K. DMRs submitted to the Department pursuant to the Permit document that stormwater discharges from outfall 002 failed to comply with permitted effluent limitations for TRZ during the months of January 2007; March, May, and September 2008; February 2009; and March 2011.
- L. The monthly DMRs also document that discharges of storm water from outfall 003 violated permitted effluent limitations for lead during the months of January, February, April, and May 2007, and March, April, May, and September 2008; and for TSS during the months of February, March, and September 2008.
- M. On March 23, 2011, an Administrative Settlement Agreement and Order on Consent for Removal Action (Agreement) between the United State Environmental Protection Agency (EPA), the Doe Run Resources Corporation (Doe Run) and DSP became effective and fully enforceable. As part of the Agreement Doe Run and DSP submitted a Removal Action Work Plan (Work Plan) to the EPA, which was approved by EPA on July 21, 2011. Doe Run and DSP further agreed to complete the removal action in accordance with the EPA approved work plan on or before March 22, 2013. Doe Run and DSP further agreed to submit to EPA for review and approval a Post-Removal Site Control Plan for long-term operations and maintenance of the tailings area and retention basins to ensure long-term effectiveness and integrity of the removal action for the Site.

IV. CITATIONS AND CONCLUSIONS OF LAW

The Director finds that the following violations of the Missouri Clean Water Law, Chapter 644, RSMo, have occurred and are occurring as follows:

- A. Failure to eliminate storm water discharges of lead mine tailings as required by the Schedule of Compliance in the Permit, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A).
- B. Causing pollution of the Shaw Branch of Flat River Creek, waters of the state, or placing or causing or permitting 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, and 10 CSR 20-7.031 (3)(B) and (3)(C).
- C. Failure to comply with permitted effluent limitations for TSS, Lead, and Zinc, in violation of Sections 644.051.1(3) and 644.076.1, RSMo and 10 CSR 20-7.015(8).

V. CORRECTIVE ACTIONS

- A. The Department and the DSP desire to amicably resolve all claims that might be brought against the DSP for the violations alleged above in Section IV, Citations and Conclusions of Law, without the DSP admitting the validity or accuracy of

- 1) By April 30, 1991, submit to the Department's Division of Environmental Quality (DEQ) an engineering report that will address the lead mine tailings dam stability at the Site;
 - 2) By July 31, 1991, submit to DEQ for approval a construction schedule and an engineering report that addresses tailings migration through the tailings dam and from any surrounding areas of the dam. The construction schedule shall include dates for submittal of plans, specifications, a construction permit application, and completion of construction of improvements to eliminate tailings migration from the park.
 - 3) Upon issuance of the construction permit, complete construction in accordance with the approved schedule; and
 - 4) Within thirty (30) days of construction completion, attain compliance with the Missouri Clean Water Law and its implementing regulations.
- G. In 1996, the lead mine tailings dam stabilization project required by Abatement Order No. 790 was completed. The storm water discharge from the lead mine tailings has not yet been eliminated.
- H. On September 30, 1997, the Environmental Protection Agency (EPA) issued an Administrative Order on Consent (AOC) to DSP. The AOC required DSP to submit an Engineering Evaluation/Cost Analysis (EE/CA) report. The EE/CA was submitted to the EPA on September 12, 1996. The EE/CA was revised and resubmitted to the EPA in March 2009. The EE/CA was approved by the EPA on September 11, 2009. The EE/CA requires DSP to submit a Work Plan, which shall include a schedule for: removal of creek side tailings deposits; construction of a storm water retention basin; regrading and stabilization of steep slopes; drainage channel improvements; trail network remediation; establishment of vegetation; and controlling public access.
- I. DMRs submitted to the Department pursuant to the Permit, document that stormwater discharges from outfall 002 failed to comply with permitted effluent limitations for lead during the months of January, February, March, April, May, and December 2007; March, April, May, July, and September 2008; February, March, May, November, and December 2009; January, February, March, June, July, September and November 2010; and February, March, April, May, and July 2011.
- J. DMRs submitted to the Department pursuant to the Permit, document that stormwater discharges from outfall 002 failed to comply with permitted effluent limitations for TSS during the months of January, February, March, April, May, and December 2007; February, March, April, May, July, and September 2008; February, March, May, October, November and December 2009; March, July, September, and November 2010; and February, March, April, May and July 2011.

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 DSP under this AOC.
- C. The provisions of this Order shall apply to and be binding upon DSP and its successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for DSP.
- D. On or before March 22, 2013, the DSP shall complete all of the corrective actions contained in the Work Plan as approved by the EPA.
- E. In the period of time from the effective date of this AOC until the corrective actions contained in the Work Plan are complete, the DSP shall operate and maintain the site at all times so as to produce the best effluent quality possible and comply with the terms and conditions of the Permit. All units or components shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment.
- F. Within sixty (60) days of completing all construction activities associated with the Work Plan, the DSP shall achieve compliance with all applicable permit effluent limitations contained in the Permit and submit a Post-Removal Site Control Plan for review. The Post-Removal Site Control Plan shall be submitted as directed in Section VII.
- G. In the event the Water Protection Program (WPP) comments on the Post-Removal Site Control Plan, the DSP shall respond to and adequately address, to the WPP's satisfaction, all of the comments on the Post-Removal Site Control Plan.
- H. Should DSP fail to meet the terms of this Order, including the deadlines set out in paragraph C, Parks agrees to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$250.00 per day
31 to 90 days	\$500.00 per day
91 days and above	\$1,000.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "State of Missouri (St. Francois 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. The stipulated penalties provided for in this AOC shall be in addition to any other rights, remedies or sanction available to the Department for the DSP violation of this AOC.
- J. Nothing in this AOC forgives the DSP 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.
- K. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified verbally.
- L. 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 parties.
- M. 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 DSP for its records.
- N. The DSP shall comply with the Law, Chapter 644, RSMo and its implementing regulations at all times in the future.
- O. The DSP duty to comply with the terms of this AOC is not conditioned on the receipt of any federal, state, or local funds. Failure to comply is not excused by lack of federal or state grant funds, or by the processing of any application for the same. Application for construction grant state revolving loan funds, or any other grants or loans, or delay caused by inadequate facility planning or plans and specifications on the part of the DSP shall not be cause for extension of any required compliance date in this AOC.

VI. WAIVER OF RIGHT TO APPEAL THIS ABATEMENT ORDER ON CONSENT

By signing this AOC No. 2012-WPCB-1001, the DSP waives any right to appeal, seek judicial review, or otherwise challenge this order, pursuant to Sections 621.250, 640.010, 644.056.3, and 644.079.2, RSMo, and 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 No. 2012-WPCB-1001 will become final and fully enforceable, as

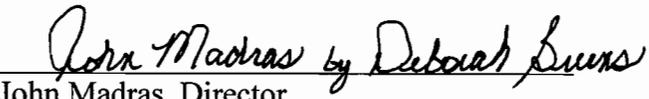
provided in Section 644.076, RSMo upon the date the Department signs.

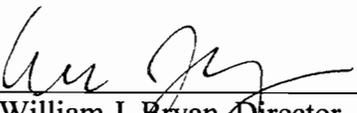
VII. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to corrective actions set forth in this Order shall be directed to:

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

SO ORDERED this 13th day of March, 2012


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


William J. Bryan, Director
Division of State Parks
Missouri Department of Natural Resources

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

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. John K. McManus
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