

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI**

IN THE MATTER OF

Aqua Missouri, Inc.

SERVE:

Terry J. Rakocy, President
Aqua Missouri, Inc.

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) No. 2013-WPCB-1227
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ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) number 2013-WPCB-1227, by the Missouri Department of Natural Resources, is a formal administrative action by the State of Missouri and is being issued because Aqua Missouri, Inc., (hereinafter "Corporation") operated the Maplewood Subdivision Wastewater Treatment Facility (WWTF) (Maplewood), Evergreen Drive Acres WWTF (Evergreen), Lee Street Lagoon (Lee Street), Lehman Acres WWTF (Lehman), Monticello Lagoon (Monticello) and Briar Village WWTF (Briar Village) in violation of the Missouri Clean Water Law (MCWL) and its implementing regulations. This AOC is issued under the authorities of Sections 640.130, 640.131, 644.056 and 644.079, RSMo. Failure to comply with this AOC is, by itself, a violation of the MCWL 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 for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Corporation of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. MISSOURI DEPARTMENT OF NATURAL RESOURCES' FINDINGS OF FACT

- A. The Corporation is registered and currently in good standing with the Missouri Secretary of State.
- B. On February 29, 2008, the Department issued Missouri State Operating Permit number MO-0035726 to Aqua Missouri, Inc. for Maplewood which includes a Schedule of Compliance (SOC) to submit by January 1, 2010, an engineering evaluation and application for a construction permit (CP) for improvements to meet final effluent limits and complete upgrades as required by the permit.
- C. On December 5, 2008, the Department issued permit number MO-0107352 to Aqua Missouri, Inc. for Evergreen which includes a SOC to submit by September 5, 2009, an engineering evaluation and plan to address impacts to the receiving stream and meet final effluent limits and complete upgrades as required by the permit.
- D. On November 26, 2008, the Department issued permit number MO-0114243 to Aqua Missouri, Inc. for Lee Street which includes a SOC to submit by May 26, 2009, an engineering evaluation and plan to address impact to the receiving stream and complete upgrades as required by the permit.
- E. On May 23, 2008, the Department issued permit number MO-0033847 to Aqua Missouri, Inc. for Monticello which includes a SOC to submit by May 23, 2009, engineering plans and an application for CP to meet final effluent limits and complete upgrades as required by the permit.
- F. On October 31, 2008, the Department issued permit number MO-0048810 to Aqua Missouri, Inc. for Lehman which includes a SOC to submit by April 30, 2009, an engineering evaluation and by January 31, 2011, plans and a CP for upgrading Lehman to address impact to the receiving stream and meet final effluent limits and complete upgrades as required by the permit.
- G. On March 9, 2007, the Department issued permit number MO-0105490 to Aqua Missouri, Inc. for Briar Village.
- H. On March 23, 2011, the Department conducted an inspection of Briar Village and observed that sludge was being discharged from the outfall pipe and the metal structural members of the plant were severely corroded. On April 13, 2011, the Department sent a Letter of Warning to Aqua Missouri, Inc. requiring an engineering evaluation of Briar Village.
- I. The Corporation as part of its business sold certain assets, including Maplewood, Evergreen, Lee Street, Lehman, Monticello and Briar Village to Missouri American Water Corporation on or about May 16, 2011. The Corporation failed to comply with the SOC contained in MSOP numbers MO-0035726, MO-0107352, MO-0114243, MO-0033847, MO-0048810 and failed to correct the violations observed at Briar Village.

III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed by the Corporation at Maplewood, Evergreen, Lee Street, Lehman, Monticello are as follows:

1. Failure to upgrade facilities as required in Part "E", Schedule of Compliance, of MSOP numbers MO-0035726, MO-0107352, MO-0114243, MO-0033847, MO-0048810, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A);

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed by the Corporation at Briar Village are as follows:

1. Failure to operate and maintain facility to comply with the MCWL and applicable permit conditions, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.; and
2. Discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031 or applicable subsection of 10 CSR 20-7.031.

IV. AGREEMENT

- A. The Department and the Corporation desire to amicably resolve all claims that might be brought against the Corporation for the violations alleged above in Section III, Citations and Conclusions of Law, without the Corporation 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 Corporation under this AOC. The signed copy of the AOC shall be delivered to:

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

- C. The Corporation 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 eighteen thousand dollars and no cents (\$18,000.00). The payment shall be in the form of three certified checks or corporate checks made payable as follows:

- D. Nine thousand dollars and no cents (\$9,000.00) to the “Cole County Treasurer, as custodian of the Cole County School Fund.”
- E. Six thousand dollars and no cents (\$6,000.00) to the “Callaway County Treasurer, as custodian of the Callaway County School Fund.”
- F. Three thousand dollars and no cents (\$3,000.00) to the “Pettis County Treasurer, as custodian of the Pettis County School Fund.”

- i. All three checks in the total amount of eighteen thousand dollars and no cents (\$18,000.00) are due and payable within 15 days of the effective date of this AOC. The checks shall be delivered along with a copy of the first page of the AOC to:

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

- G. Although this agreement resolves all differences between the parties through May 31, 2011, nothing in this AOC forgives the Corporation for future non-compliance with the laws of the state of Missouri, nor requires the Department or state of Missouri to forgo pursuing by any legal means any noncompliance with the laws of the State of Missouri. 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 as 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.
- H. 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.
- I. 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 Corporation for its records.
- J. The Corporation shall comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

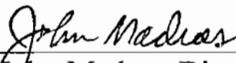
By signing this AOC, the Corporation consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 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:

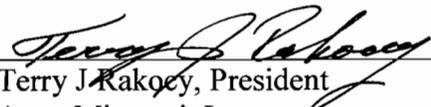
Ms. Mary Ann Sutter
Compliance and Enforcement Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 9th day of April, 2013



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

Agreed to and Ordered this 19th day of March, 2013



Terry J. Rakocy, President
Aqua Missouri, Inc.

Copies of the foregoing served by certified mail to:

Terry J Rakocy, President
Aqua Missouri, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010

CERTIFIED MAIL 7009225000008869903

Thomas R. Schwarz, Jr.
Blitz, Bardgett & Deutch, LC
308 East High Street, Suite 301
Jefferson City, MO 65101

CERTIFIED MAIL 7009 2250 0000 0886 9910

c: Ms. Diane Huffman
Chief, NPDES and Facilities Management Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII
11201 Renner Blvd.
Lenexa, KS 66219

Mr. Chris Wieberg, Chief
Operating Permits Section
Water Protection Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Ms. Janet Pointer, Accounting Specialist
Accounting Program
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Jefferson City, MO 65102-0176

Ms. Irene Crawford, Director
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Dr. Samuel M. Hunter, Chair
Missouri Clean Water Commission
P O Box 984
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Mr. Ben A. "Todd" Parnell, III, Vice Chair
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Drury University
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Springfield, MO 65802

Mr. John Cowherd, Commissioner
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1303 Deer Lane
Mount Vernon, MO 65712

Mr. Samuel D. Leake, Commissioner
Missouri Clean Water Commission
41690 Harrison Trail
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Ms. Wallis Warren, Commissioner
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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

