

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

IN THE MATTER OF:

Pendleton Village,
Wastewater Treatment Facility

SERVE:

Mr. Chris Pottebaum, Chairman
Pendleton Village

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) No. 2013-WPCB-1197
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ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuance of this Abatement Order on Consent (AOC) No. 2013-WPCB-1197 by the Missouri Department of Natural Resources is a formal administrative action by the State of Missouri and is being issued because the wastewater treatment facility serving Pendleton Village is 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. Litigation may occur without further 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 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 village of liability for, or preclude the Department from, initiating a 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. FINDINGS OF FACT

A. As part of its services to a previously unincorporated sewer district, the village owns and operates a facility located in the SE ¼, NW ¼, NE ¼, Section 22, Township 47 North, Range 3 West, in Warren County. The facility consists of a two (2)-section sand filter preceded by a septic tank and has chlorine disinfection and tablet dechlorination. The facility has a design population equivalent of 164 and a design flow of 14,990 gallons per day. The design sludge production of the facility is 1.2

dry tons per year. The facility operates pursuant to Missouri State Operating Permit number MO-0136093. Pursuant to the operating permit, the facility discharges effluent to an unnamed tributary to Lost Creek.

- B. Lost Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (27), RSMo.
- C. Domestic wastewater is a water contaminant source as the term is defined in Section 644.016(24), RSMo.
- D. On October 15, 2010, the Department issued the operating permit to the village. Pursuant to the operating permit, the village is required to sample the effluent discharged from the facility and chemically analyze the sample for the parameters listed in Part "A" of the operating permit. As part of the requirements contained in the operating permit, the village is also required to submit the results of the analyses to the Department on monthly Discharge Monitoring Reports (DMRs) on or before the 28th day of the month following the reporting period.
- E. On June 3, 2011, and September 13, 2011, the Department sent letters informing the village of violations of the operating permit. The village failed to submit monthly DMRs required by the operating permit since November 2010. The Department requested a written response from the village explaining the reason for the violations. To date, the Department has not received a written response from the village.
- F. On December 22, 2011, Department staff conducted a routine compliance inspection of the village's facility. During the inspection, the facility was found to be in noncompliance with the MCWL for failing to submit DMRs since November 2010, and failing to pay permit fees for 2011.
- G. On January 26, 2012, the Department issued NOV No. 2782 SL to the village for failing to submit DMRs from November 30, 2010, to December 31, 2011.
- H. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL 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 MCWL and its implementing regulations alleged herein and found to have been committed by the village at the wastewater facility are as follows:

1. Failure to submit complete, accurate, and timely DMRs as required in Part "A" of Missouri State Operating Permit number MO-0136093 in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A); and
2. Failure to pay Missouri State Operating Permit Fees – Annual Sewer Connection in violation of Section 644.052 and 644.055 RSMo.

IV. AGREEMENT

- A. The Department and the village desire to amicably resolve all claims that might be brought against the village for the violations alleged above in Section III, Conclusions of Law, without the village 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 village under this AOC. If the village sells or otherwise transfers the facility, then the village shall cause as a condition of such sale or transfer, that the buyer will assume the obligations of the village under this AOC in writing. In such event, the village shall provide thirty (30) days prior written notice of such assumption to the Department.
- C. The village, 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 five-thousand two hundred twenty-seven dollars and zero cents (\$5,227.00). The Department and the village further agree that five-thousand two hundred twenty-seven dollars and zero cents (\$5,227.00) of the civil penalty shall be suspended, for two years, on the condition that the village does not violate the terms of this AOC. Upon determination that the village has failed to meet the terms of this AOC, including the conditions of paragraphs D through paragraph F, the Department shall send a written demand to the village for the suspended penalty in the amount of five-thousand two hundred twenty-seven dollars and zero cents (\$5,227.00). The civil penalty shall be paid in the form of a certified check or cashier's check made payable to the "Warren County School Treasurer, as custodian of the Warren County School Fund." The village shall have fifteen (15) days from the receipt of the written demand to submit the suspended penalty which shall be delivered to:

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

- D. Within ten (10) days of the execution of this AOC, the village agrees to submit all missing DMRs from November 2010 to present; or, if DMRs are not available, submit a written response to the Department detailing the reason DMRs are not available.
- E. The village agrees to submit timely, accurate, and complete DMRs to the Department and comply with the MCWL and the operating permit at all times in the future.

- F. Nothing in this AOC forgives the village from future non-compliance with the laws of the State of Missouri, nor requires the Department or the State of Missouri to forego pursuing by any legal means for 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 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.
- G. 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.
- H. 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 village for their records.
- I. The village shall comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

V. AFFORDABILITY FINDING

Pursuant to Section 644.145, the Department's Affordability Finding, which addresses the obligations included within this AOC, is attached hereto as Exhibit 1. The Warren County Sewer District estimates the cost to comply with the requirement to sample and analyze the effluent pursuant to the conditions and requirement so of Missouri State Operating Permit number MO-0136093 will be two thousand seven hundred sixty-six dollars and zero cents (\$2,766.00) per year,. This Affordability Finding does not address future improvements that may be necessary to comply with the MCWL or its implementing regulations. This AOC requires the village to submit complete, accurate and timely DMRs. The village agrees to provide such additional information requested by the Department as is reasonably necessary to assist in developing any required Affordability Finding in the future.

VI. RIGHT OF APPEAL

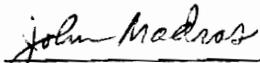
By signing AOC No. 2013-WPCB-1197, the village consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC, or the affordability finding referenced herein, pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, 644.145 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 and 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 27th day of August, 2013



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

Agreed to and Ordered this 30 day of July, 2013



Chris Pottebaum, Chairman
Pendleton Village

Copies of the foregoing served by certified mail to:

Mr. Chris Pottebaum, Chairman CERTIFIED MAIL:
Pendleton Village
Chairman
28837 Pendleton Church Road
Warrenton, MO 63383

- 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

Ms. Dorothy Franklin, Director
Missouri Department of Natural Resources
St. Louis Regional Office
7545 S. Lindbergh, Ste 210
St. Louis, MO 63125

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

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

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

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**

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

Missouri Department of Natural Resources
Water Protection Program
Affordability Determination and Finding
(In accordance with RSMo 644.145)

Pendleton Village Wastewater Treatment Facility

Section 644.145 RSMo requires the Missouri Department of Natural Resources to make a “finding of affordability” when “issuing permits under” or “enforcing provisions of” state or federal clean water laws “pertaining to any portion of a combined or separate sanitary sewer system or publicly-owned treatment works.”

Description:

The Village of Pendleton is served by a wastewater treatment facility that was funded through the American Recovery and Reinvestment Act. The facility consists of a two-section sand filter which is preceded by a septic tank and utilizes chlorine disinfection and tablet dechlorination. Treated wastewater discharges through outfall number 001 to an unnamed tributary to Lost Creek pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) number MO-0136093.

The village is required to sample the effluent discharged from the facility and chemically analyze the sample for the parameters listed in Part “A” of the MSOP number MO-0130693. The village is also required to submit the results of the analyses to the Department on monthly Discharge Monitoring Reports (DMRs) on or before the 28th day of the month following the reporting period.

Residential Connections: 19¹

Commercial Connections:

Total Connections: 19¹

New Permit Requirements or Requirements Now Being Enforced:

The village failed to submit timely and accurate Discharge Monitoring Reports (DMRs) as required by MSOP number MO-013096.

Range of Anticipated Costs Associated with Complying with Requirements:

The AOC will require the village to spend approximately two thousand seven hundred sixty-six dollars and zero cents (\$2,766.00) per year for analyses of monthly effluent samples.

¹ Montgomery County Sewer District, Tina Wideman

Exhibit 1

(1) A community's financial capability and ability to raise or secure necessary funding (examining key indicators of the community's ability to raise funds):

Current User Rates Per Year ² :	\$636.00
Rate Capacity or Pay as You Go Option ³ :	N/A
Municipal Bond Rating (if applicable) ³ :	N/A
Bonding Capacity ³ :	N/A
<i>Note: General Obligation Bond capacity allowed by the constitution for cities is up to 20% of taxable tangible property, and for sewer districts is up to 5% of taxable tangible property.</i>	
Current outstanding debt ⁴ :	\$113,000.00

Other indicators:

(2) Affordability of pollution control options for the individuals or households of the community;

Current annual operating costs ⁵ (exclude depreciation):	\$7,566.00
Current per year user rate ² :	\$636.00
Estimated capital cost of pollution control options:	N/A
Annual cost of additional (operating costs and debt service):	N/A
Estimated resulting user rate per year ² :	\$636.00
Adjusted Median Household Income (MHI) ⁶ :	\$21,000.00
Usage Rates as a percent of Median Household Income ⁷ : <i>(Rate/MHI) (\$636/\$21,000) *100 = 3.02%</i>	3.02%

² Montgomery County Sewer District, Tina Wideman, \$53 per month * 12 months = \$636 per year

³ Pendleton Village is a non-taxing entity, Warren County Assessor- Wendy Nordwald

⁴ MDNR SRF Coordinator for Pendleton Village – Jeremy Payne

⁵ Montgomery County Sewer District, Tina Wideman, the Montgomery County Sewer District charges \$400 per month for operation and maintenance and \$230.50 for water quality testing services (\$400.00 + \$230.50)*12 months = \$7,566 per year

⁶ Median Household Income data from American Community Survey – Median income in the past 12 months – <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

⁷ (\$636.00 / \$21,000)*100 = 0.54

Exhibit 1

	Financial Impact	Residential Indicator (Usage Rate as a percent of MHI)
<input type="checkbox"/>	Low	Less than 1% MHI
<input type="checkbox"/>	Medium	Between 1% and 2% MHI
<input checked="" type="checkbox"/>	High	Greater than 2% MHI, Unknown

The residential user rate is 3.02% of MHI and is currently a high burden for most customers.

(3) *An evaluation of the overall costs and environmental benefits of the control technologies;*

MSOP number MO-0136093 requires the village treat wastewater generated by its residents and requires the effluent to comply with the limitations listed in Part A of MSOP number MO-0136093. The effluent limitations included the MSOP number MO-0136093 are protective of the beneficial uses designated for the stream that receives the effluent from the village's wastewater treatment facility. MSOP number MO-0136093 requires the village to collect a representative sample of the effluent, analyze the effluent sample and report the results to the Department to document the facility's performance.

(4) *An inclusion of ways to reduce economic impacts on distressed populations in the community, including but not limited to low and fixed income populations. This requirement includes but is not limited to:*

Potentially Distressed Populations	
Unemployment ⁸ for Pendleton village, Warren County 2010	10.2%
Adjusted Median Household Income ⁶ for Sedalia, Pettis County	\$21,000.00
Percent Population Growth/Decline ⁹ (1990-2010)	N/A
Percent of Households in Poverty ¹⁰	3.4%

Opportunity for cost savings or cost avoidance:

None noted

⁸ Unemployment data from Missouri Department of Economic Development (February 2012) – <http://www.missourieconomy.org/pdfs/ure1.202.pdf>

⁹ Pendleton Village was not an incorporated municipality during the 2000 census; therefore no statistics for population change are available

¹⁰ Poverty data – American Community Survey- <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>

Opportunity for changes to implementation/compliance schedule:
None noted

(5) ***An assessment of other community investments relating to environmental improvements;***

None noted

(6) ***An assessment of factors set forth in the United States Environmental Protection Agency's guidance, including but not limited to the "Combined Sewer Overflow Guidance for Financial Capability Assessment and Schedule Development" that may ease the cost burdens of implementing wet weather control plans, including but not limited to small system considerations, the attainability of water quality standards, and the development of wet weather standards;***

Secondary indicators for consideration:

Socioeconomic, Debt and Financial Indicators

Indicators	Strong (3 points)	Mid-Range (2 points)	Weak (1 point)	Score
Bond rating indicator ³	Above BBB or Baa	BBB or Baa	Below BBB or Baa	N/A
Overall net debt as a % of full market property value ³	Below 2%	2% - 5%	Above 5%	N/A
Unemployment Rate	>1% below Missouri average	± 1% of Missouri average	>1% above Missouri average	1 8.4% - 10.2% = - 1.8%
Median Household Income	More than 25% above Missouri MHI	± 25% of Missouri MHI	More than 25% below Missouri average	1 (((\$21,000-\$44,306)/\$44,306) *100 = -52.6%%
Property tax revenues as a % of full market property value ³	Below 2%	2% - 4%	Above 4%	N/A
Property tax collection rate ³	Above 98%	94% - 98%	Below 94%	N/A

Average Score for Financial Capability Matrix (1+1) / 2 = 1:
Residential Indicator (from Criteria #2 above):

1
High

Financial Capability Matrix

Financial Capability Indicators Score from above ↓	Residential Indicator (User rate as a % of MHI)		
	Low (Below 1%)	Mid-Range (Between 1.0% and 2.0%)	High (Above 2.0%)
Weak (below 1.5)	Medium Burden	High Burden	High Burden
Mid-Range (1.5 – 2.5)	Low Burden	Medium Burden	High Burden
Strong (above 2.5)	Low Burden	Low Burden	Medium Burden

Estimated Financial Burden:

High Burden

(7) An assessment of any other relevant local community economic condition.

The population of Pendleton village is 43. Warren County’s population grew 66.4% from 1990-2010. In terms of economic strength, Warren County is above average when compared to other counties in the State. The percentage of labor force is the same as the state average, the per capita wealth¹¹ is 3% below the state average and the per capita income is 11% below the state average.

In terms of retail sales, Warren County loses retail customers to surrounding counties and the county residents spend less than the state average on retail goods and services. The buying power index of Warren County residents is above average when compared to the rest of the regional economy¹².

Conclusion and Finding

As a result of reviewing the above criteria, the Department finds that the existing permit conditions and requirements are a high burden on the village’s overall financial capability and a high burden for individual customers/households.

¹¹ Per capita wealth is calculated by taking a sum of appraised value of residential property, mobile homes and motor vehicles and this sum is then divided by County population.

¹² http://www.missourieconomy.org/pdfs/ne_wia_retail_trade_analysis.pdf

