

discharges wastewater from its operations to the city of Union's sewer collection system and has never had a Missouri State Operating Permit (MSOP).

- B. Flat Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- C. Metals-containing chemical process by-products are water contaminants as the term is defined in Section 644.016(24), RSMo.
- D. On August 8, 2013, Department staff responded to a report of a chemical spill from the facility, which had occurred earlier that day. Mr. Thomas Ziegler, Vice President at the company, reported the spill to the Department, and stated the cause was a mixture of aluminum and sodium hydroxide overflowing from a neutralization tank at the facility. There was no precise estimate of the volume of the mixture that was spilled. The mixture flowed into a storm drain and traveled through a storm pipe to Flat Creek, located south of the manufacturing facility.
- E. During the investigation, Department staff observed and photographed white cloudy water and rust-colored water in segments of Flat Creek below the storm drain's entrance. Investigators took field measurements of water quality variables at multiple sites in the creek. Field measurements indicated that the Dissolved Oxygen concentration markedly decreased, and conductivity and pH dramatically increased, downstream of the point where the spilled material entered the stream.
- F. Staff further documented that a fish kill occurred in Flat Creek as a result of the spill. Missouri Department of Conservation (MDC) staff observed dead aquatic organisms and categorized the mortality by species and size category. Based upon this investigation, MDC documented that the release of aluminum and sodium hydroxide into waters of the state affected an approximately 1,000 foot segment of the creek, and killed an estimated 108 aquatic organisms with a calculated value of \$51.02.
- G. Based upon the violations documented by Department staff during the August 8, 2013, investigation, the Department issued Notice of Violation (NOV) No. SLR 06222292 to the company on August 28, 2013, for the incident. In the letter that accompanied the NOV, the Department required the company to submit documentation detailing the actions taken to clean up the spill and provide a detailed explanation of how the company planned to prevent future spills. On September 13, 2013, the company sent a letter to the Department that described the actions taken by the company to clean up the spill and that outlined the steps that the company had taken to prevent any future spills.
- H. MCWL and Section 644.096, RSMo, authorize 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 Sections 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 it because of any violation.

- I. The Department dispatched employees to investigate the August 8, 2013 chemical spill. In doing so, the Department incurred costs and expenses, including but not limited to, water sampling and analysis, photographs, and travel expenses. These costs incurred by the Department total \$1,848.29. In addition, MDC incurred similar costs and expenses in the amount of \$512.12, including the value of the fish.
- J. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to \$10,000.00 per day per violation.

III. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations by the company alleged herein are as follows:

1. On August 8, 2013, discharged water contaminants into Flat Creek, waters of the state, which reduced the quality of such waters below the Water Quality Standards, general and specific criteria, as established by the Missouri Clean Water Commission, in violation of Sections 644.051(2) and 644.076.1, RSMo, and 10 CSR 20-7.031.
2. Caused pollution of Flat Creek, 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.
3. On August 8, 2013, operated, used, or maintained a water contaminant source, a mixture of sodium hydroxide and aluminum which discharged to Flat Creek, waters of the state, without a MSOP, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

IV. AGREEMENT

- A. The Department and the company desire to amicably resolve all claims that may be brought against the company for violations alleged above in Section III, Citations and Conclusions of Law, without the company admitting to 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 company under this AOC. If the company sells or otherwise transfers the facility prior to the completion or satisfaction of its obligations under this agreement, then the company shall cause as a condition of such sale or transfer, that the buyer will assume the obligations

of the company under this AOC in writing. In such an event, the company shall provide 30 days prior written notice of such assumption to the Department.

- C. The company, 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 \$4,000.00. The payment of the civil penalty shall be in the form of a certified check or cashier's check made payable to the "Franklin County Treasurer, as custodian of the Franklin County School Fund." The check in the amount of \$4,000.00 is due and payable upon execution of this AOC by the company. The check and signed copies of the AOC shall be delivered to:

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

- D. The company agrees to pay the state's investigative costs; damages; and the value of the fish killed, in the amount of \$2,360.41 in the form of a certified check or cashier's check made payable to the "State of Missouri." The check, in the amount of \$2,360.41 is due and payable upon execution of this AOC by the company. The check shall be delivered to:

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

- E. Within 30 days of the effective date of this AOC, the company shall submit to the Department, a document explaining the actions taken to clean up the spill and providing a detailed explanation of how the company intends to prevent future spills. The company further agrees to immediately implement the spill prevention measures in the document upon Department approval.

- F. Should the company fail to meet the terms of this AOC, the company shall be subject to 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 "Franklin County Treasurer, as custodian of the Franklin County School Fund." Any such stipulated penalty shall be paid within 10 days of demand by the Department and shall be delivered to:

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

- G. Nothing in this AOC forgives the company 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 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 of 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 AOC. The Department shall send a fully executed copy of this AOC to the company for its records.
- J. The company 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 company 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:

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

Agreed to and Ordered this 23rd day of July, 2014



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

Agreed to and Ordered this 14th day of July, 2014



Mr. Thomas Ziegler, Vice President
Crystal Extrusion Systems, Ltd.

Copies of the foregoing served by certified mail to:

Mr. Thomas Ziegler, Vice President CERTIFIED MAIL # 7013 2250 0002 2840 9241
Crystal Extrusion Systems, Ltd.
704 West Park Road
Union, MO 63084

- c:
- Ms. Diane Huffman, Environmental Protection Agency
 - Mr. Chris Wieberg, Chief, Operating Permits Section
 - Ms. Janet Pointer, Accounting Specialist, Accounting Program
 - Ms. Dorothy Franklin, Director, St. Louis Regional Office
 - Missouri Clean Water Commission
 - Mr. Dale Hermeling, Jenkins & Kling, 150 North Meramec Avenue, Suite 400, St. Louis, MO 63105