

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

**IN THE MATTER OF:** )  
 )  
 Missouri Department of Transportation )  
 Highway 60/65 Interchange Project )  
 Springfield, Greene County, Missouri ) No. 2014-WPCB-1288  
 )  
**SERVE:** )  
 )  
 Mr. David B. Nichols, Director )  
 Missouri Department of Transportation )

**ABATEMENT ORDER ON CONSENT**

**I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuing of this Abatement Order on Consent (AOC) number 2014-WPCB-1288, by the Missouri Department of Natural Resources, is a formal administrative action by the State of Missouri and is being issued because the Missouri Department of Transportation (MoDOT) violated the Missouri Clean Water Law (MCWL). 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 MoDOT 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. FINDINGS OF FACT**

- A. MoDOT is a state agency created by and pursuant to the laws of the state of Missouri.
- B. MoDOT performs construction, or land disturbance activity, related to roadway transportation projects throughout the state of Missouri pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) No. MO-R100007.
- C. The Department last issued MSOP No. MO-R100007 to MoDOT on May 31, 2012, and it is set to expire by its own terms on May 30, 2017. MSOP No. MO-R100007 authorizes MoDOT to discharge stormwater from land disturbance sites that disturb one or more acres of land in accordance with the effluent

limitations, inspection, reporting and monitoring requirements set forth in MSOP No. MO-R100007. MSOP No. MO-R100007 requires MoDOT to design, install, and maintain effective erosion and sediment controls to minimize the discharge of pollutants from active land disturbance sites. Pursuant to MSOP No. MO-R100007, settleable solids discharging from a stormwater outfall at an active construction site shall not exceed 2.5 ml/L for storm events up to, but not to exceed, the local two-year, twenty-four-hour storm event.

- D. The primary requirement of MSOP No. MO-R100007 is development and implementation of a Stormwater Pollution Prevention Plan (SWPPP), which incorporates site specific practices to best minimize soil exposure, soil erosion, and discharge of pollutants from construction sites. The purpose of the SWPPP is to ensure the design, implementation, management and maintenance of Best Management Practices (BMPs) in order to ensure stormwater discharges associated with MoDOT's land disturbance activities comply with the Missouri Water Quality Standards and the terms and conditions of MSOP No. MO-R100007. Additionally, when surface waters are located on or immediately adjacent to an active site, MSOP No. MO-R100007 requires MoDOT to provide at a minimum a twenty-five foot buffer of undisturbed natural vegetation between the disturbed portions of the site and the surface water, unless infeasible.
- E. In May 2009, MoDOT initiated land disturbance activities at the Highway 60/65 Interchange in Springfield, Greene County, Missouri, and throughout the life of the project disturbed approximately 10 acres of land. Stormwater from the site discharged to Galloway Creek, Lake Springfield and several of their tributaries.
- F. Galloway Creek, Lake Springfield, and their tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.
- G. Sediment is a water contaminant as the term is defined in Section 644.016(24), RSMo.
- H. Between September 1, 2009, and February 7, 2013, Department staff conducted approximately 12 inspections in response to environmental concerns. On several occasions, Department staff observed that inadequate BMPs had resulted in sediment-laden stormwater leaving the disturbance site and entering the Springfield Conservation Nature Center (immediately south of the disturbance site), Galloway Creek and several unnamed tributaries to Lake Springfield. As a result of violations documented during these inspections, the Department issued MoDOT one Letter of Warning and four Notices of Violation between June 1, 2010 and April 3, 2013. Despite MoDOT's remediation efforts, inadequate selection and maintenance of BMPs continued to allow sediment to leave the property and impact waters of the state.
- I. As a result of the above investigations described in Paragraph H, the Department incurred costs for staff time and resources in the amount of five thousand one hundred fifty-six dollars and fifty-seven cents (\$5,156.57).
- J. Section 644.096, RSMo, creates a cause of action in favor of the state, or any of its political subdivisions or agencies, 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.

- K. 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. CITATIONS AND CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged by the Department to have occurred at the site are as follows:

1. On September 21, 2011, September 18 and 20, October 4, 2012, and February 7, 2013, failed to properly select, install, and maintain BMPs for erosion and sediment control as required by MSOP No. MO-R10007, in violation of Section 644.076.1, RSMo and 10 CSR 20-6.200;
2. On September 21, 2011, September 18 and 20, October 4, 2012, and February 7, 2013, caused pollution of 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;
3. On September 18 and 20, October 4, 2012, and February 7, 2013, discharged water contaminants into waters of the state which reduced the quality of such waters below the Water Quality Standards general 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;
4. Failed to provide at minimum a twenty-five foot buffer of undisturbed natural vegetation between the disturbed portions of the site and the surface water as required by Part C, Requirements, 6e of MSOP No. MO-R100007, in violation of Section 644.076.1, RSMo; and
5. Failed to provide a site map with all required elements as required by Part C, Requirements, 6b of MSOP No. MO-R100007, in violation of Section 644.076.1, RSMo.

### IV. AGREEMENT

- A. The Department and MoDOT desire to amicably resolve all claims that may be brought against MoDOT for violations alleged above in Section III, Citations and Conclusions of Law, without MoDOT 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 MoDOT under this AOC.

- C. MoDOT 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 forty thousand dollars and no cents (\$40,000.00). The payment shall be in the form of a check made payable to "Greene County Treasurer, as custodian of the Greene County School Fund." The check in the amount of forty thousand dollars and no cents (\$40,000.00) is due and payable upon execution of this AOC by MoDOT. 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 65102-0477

- D. MoDOT agrees to pay the state's investigative costs in the amount of five thousand one hundred fifty-six dollars and fifty-seven cents (\$5,156.57) in the form of a separate check made payable to the "*State of Missouri*." The check in the amount of five thousand one hundred fifty-six dollars and fifty-seven cents (\$5,156.57) is due and payable upon execution of this AOC by MoDOT. The check shall be delivered as provided in paragraph IV, C.
- E. MoDOT agrees to select, install, implement, and maintain adequate BMPs so as to prevent violations of the Missouri Water Quality Standards established in 10 CSR 20-7.031 in accordance with MSOP No. MO-R100007 at all existing and future construction sites.
- F. Nothing in this AOC forgives MoDOT 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 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. Upon full payment of the above-mentioned penalty and full compliance with all provisions of this AOC, the Department agrees to refrain from initiating or asserting against MoDOT any civil or administrative suit claiming violations of the MCWL, Chapter 644, RSMo, listed in NOV Nos. 13243SW, 13318SW, 14449SW and 14659SW.

- 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 MoDOT for its records.
- J. MoDOT shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

V. RIGHT OF APPEAL

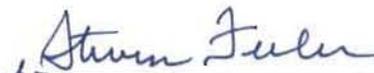
By signing this AOC, MoDOT consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 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. Corinne Rosania  
Missouri 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 4<sup>th</sup> day of August, 2014

  
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Leanne Tippett Mosby, Director  
Division of Environmental Quality  
Missouri Department of Natural Resources

Agreed to and Ordered this 30<sup>th</sup> day of June, 2014

  
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David B. Nichols, Director  
Missouri Department of Transportation

Copies of the foregoing served by certified mail to:

Mr. David B. Nichols, Director  
Missouri Department of Transportation  
105 West Capitol Avenue  
Jefferson City, MO 65102

- c: Ms. Kathy Harvey, Missouri Department of Transportation  
Ms. Gayle Unruh, Missouri Department of Transportation  
Ms. Diane Huffman, U.S. Environmental Protection Agency, Region 7  
Mr. Chris Wieberg, Chief, Operating Permits Section  
Ms. Janet Pointer, Accounting Specialist, Accounting Program  
Ms. Irene Crawford, Director, Northeast Regional Office  
Ms. Andrea Collier, Director, Kansas City Regional Office  
Ms. Dorothy Franklin, Director, St. Louis Regional Office  
Ms. Cindy Davies, Director, Southwest Regional Office  
Mr. Jackson Bostic, Director, Southeast Regional Office  
Missouri Clean Water Commission