

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

IN THE MATTER OF:

City of Purdy, Wastewater Treatment Facility

No. 2013-WPCB-1222

SERVE:

The Honorable Steve Roden, Mayor
City of Purdy

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuance of this Abatement Order on Consent (AOC) No. 2013-WPCB-1222 by the Missouri Department of Natural Resources is a formal administrative action by the State of Missouri and is being issued because the City of Purdy's wastewater treatment facility 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 city of liability for, or preclude the Department from, initiating a judicial enforcement action to recover civil penalties for any violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. The city is served by a wastewater treatment facility that consists of two no-discharge lagoons with sludge retained in the lagoons. Wastewater from the west lagoon is pumped to the east lagoon where the wastewater is land applied on a 55-acre agricultural field. Outfall number 001 and number 002 are emergency discharge outfalls for the East and West lagoons, respectively. Design flow for the west lagoon is 27,000 gallons per day and the design flow for the east lagoon is 120,000 gallons per day. The lagoons operate pursuant to Missouri State Operating Permit (MSOP)

number MO-0043222, which became effective on June 1, 2009, and expires on May 31, 2014. The operating permit establishes Nitrate + Nitrite limitations for three (3) ground water monitoring wells located near the land application site. The lagoons' watershed is a losing setting into Little Flat Creek.

- B. Little Flat 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 as the term is defined in Section 644.016(24), RSMo.
- D. The MSOP requires the city to sample emergency discharges and or irrigated wastewater discharging from outfalls #001 and 002 and chemically analyze the effluent sample for the water contaminants listed in Part "A" once a month. The MSOP also requires the effluent to comply with the effluent limitations contained in Part "A" of the MSOP and requires the results of analysis to be submitted to the Department on monthly discharge monitoring reports (DMRs) by the 28th day of the month following the reporting period. The MSOP also requires the city to conduct and maintain records pertaining to land application operational monitoring, and submit them to the Department on DMRs by the 28th day of the month following the reporting period.
- E. Since October of 2011, monthly DMRs submitted to the Department document that groundwater violated the permitted limitations for Nitrate + Nitrite for 16 months. Due to the exceedances the Department has issued two (2) Letters of Warning (LOWs) to the city for effluent violations documented by DMRs. Additionally, a review of records for the same period indicates that the city failed to submit a Nitrate + Nitrite value for July and September 2012, a pH values for October 2011 and July 2013, FC for May 2012, and FC, TSS, and BOD for May 2012
- F. On July 12, 2012, the Department conducted a compliance inspection of the city's facility. During the inspection, the inspector documented that the city failed to comply with permitted limits contained in Part "A" of the operating permit. The inspector also noted the city had failed to properly conduct operational testing and failed to submit a semi-annual Infiltration and Inflow (I & I) report. During the site visit staff observed woody vegetation growing on the lagoon berms. On July 27, 2012, the Department issued the city a NOV for violations of the MCWL documented during the July 12, 2012, inspection.
- G. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated 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 city at the facility are as follows:

1. Failure to comply with permit limitations for Nitrate + Nitrite as required by Part "A" of the operating permit, in violation of Sections 644.051.1(3) and 644.1.761 RSMo;
2. Caused pollution of waters of the state, or placed or caused or permitted to be placed, domestic wastewater, 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. Failed to submit complete DMRs as required in Part "A" of operating permit, in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(A)1; and
4. Failed to perform and record operational control test and failed to submit an I&I report as required by the conditions of the operating permit, in violation of Section 644.076.1, RSMo.

IV. AGREEMENT

- A. The Department and the city desire to amicably resolve all claims that might be brought against the city for the violations alleged above in Section III, Conclusions of Law, without the city 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 city under this AOC.
- C. The city, 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 sixteen thousand dollars and zero cents (\$16,000.00). The civil penalty shall be paid in the form of certified checks or cashier's checks made payable to the "Barry County School Treasurer, as custodian of the Barry County School Fund." The Department and the city further agree that sixteen thousand dollars and zero cents (\$16,000.00) of the civil penalty shall be suspended on the condition that the city does not violate the terms of this AOC. Upon determination that the city has failed to meet the terms of this AOC, including the schedule set out in paragraph D through paragraph F, the Department shall send a written demand for the suspended penalty in the amount of sixteen thousand dollars and zero cents (\$16,000.00) to the city. The city shall have fifteen (15) days from 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. In the period of time from the effective date of this AOC until the new or upgraded facility is completed, the city shall operate and maintain the existing facility at all times so as to produce the best effluent quality possible and comply with the terms and conditions of the MSOP. All units or components of the existing facility shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment and the repair of the facility.
- E. The city agrees to submit timely, accurate, and complete DMRs to the Department as required by the conditions and requirements of MSOP number MO-0043222. The city also agrees to conduct and record all operational tests and properly operate and maintain the city's lagoons to comply with the requirements of the MSOP, MCWL and their implementing regulations.
- F. Within thirty (30) days of the effective date of this AOC, the city agrees to submit the semi-annual I&I Reports due October 2012 and April 2013 and the Operation and Maintenance Report due January 2013, to the Department, as required by the MSOP and remove woody vegetation from the lagoon berms.
- G. Within one hundred twenty (120) days of the effective date of this AOC, submit to the Department for review and approval, a facility plan developed in accordance with the requirements of 10 CSR 20-8.110 and prepared by a professional engineer licensed to practice in the State of Missouri. The facility plan shall evaluate the wastewater treatment system and recommend corrective actions to enable the facility to comply with the MCWL and the conditions and requirements of the MSOP. Although not required at this time, the engineering report may also include alternatives that will result in compliance with final effluent limitations for ammonia as nitrogen which will be required when the operating permit is renewed. Additionally, the facility plan shall include a schedule of completion dates for major project milestones, including but not limited to, an Antidegradation Review, if necessary; submittal of complete application for a construction permit; and a construction completion date. The city shall implement the schedule as approved by the Department, which shall be enforceable as a condition of compliance of this AOC.
- H. The city shall put forth best efforts to secure funding from all potential sources for the construction of upgrades required to enable the facility to comply with the MCWL and the conditions and requirements of the MSOP. Should the city fail to secure complete funding, the Department will consider granting and extension
- I. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the city shall notify the

Department by telephone or electronic mail i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five (5) days of notifying the Department, the city shall submit to the Department for review and approval a written request containing the same basic provisions of i, ii, and iii listed above. The Department may grant an extension if it deems appropriate. Failure to submit a written notice to the Department may constitute a waiver of the city's right to request an extension and may be grounds for the Department to deny the city an extension.

- J. Should the city fail to meet the terms of this AOC, including the terms set out in Paragraph D through Paragraph F, the city shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100.00 per day
31 to 90 days	\$250.00 per day
91 days and above	\$500.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "*Barry County Treasurer, as custodian of the Barry 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

- K. Nothing in this AOC forgives the city 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 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.
- 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 party.
- M. 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 city for its records.
- N. The city 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. 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 city to submit a facility plan for upgrades or construction of a new facility that allows the lagoon to comply with permitted limitations. The Department will prepare an Affordability Finding addressing such improvements in connection with Department approval of such facility plan. The city 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**

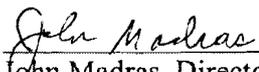
By signing AOC No. 2013-WPCB-1222, the city consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC, or the affordability finding referenced herein, pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, 644.145 RSMo, Chapter 536 RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law. AOC No. 2013-WPCB-1222 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

VI. **CORRESPONDENCE AND DOCUMENTATION**

Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

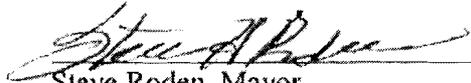
Ms. Kristi Savage-Clarke
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 23rd day of May, 201~~8~~^{4 gm}



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

Agreed to and Ordered this 12 day of MAY, ²⁰¹⁴~~2013~~



Steve Roden, Mayor
City of Purdy

Copies of the foregoing served by certified mail to:

The Honorable Steve Roden
City of Purdy
P.O. Box 216
Purdy, MO 65734

CERTIFIED MAIL:

- c. Ms. Diane Huffman, Environmental Protection Agency
- Mr. Chris Wieberg, Chief, Operating Permits Section
- Ms. Cynthia Davies, Director, Southeast Regional Office
- Ms. Janet Pointer, Accounting Specialist, Accounting Program
- Missouri Clean Water Commission