BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI

IN THE MATTER OF:	)	
	)	
Tyson Foods – Sedalia Processing Plant	)	
	)	
	)	No. 2014-WPCB-1276
SERVE:	)	
	)	
Tyson Foods, Incorporated	)	
	)	

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) number 2014-WPCB-1276, by the Missouri Department of Natural Resources, is a formal administrative action by the State of Missouri and is being issued because Tyson Foods, Incorporated (Tyson) 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 Tyson 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. Tyson Foods, Incorporated is a business registered and in good standing with the Missouri Secretary of State, which owns and operates a poultry processing plant located at 19571 Whitefield Road, Sedalia, Missouri 65301.

B. Muddy Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (27), RSMo.

C. On November 6, 2012, Tyson discovered a fish kill during an inspection of a tributary to Muddy Creek. An investigation conducted by Tyson concluded that

chlorine residual levels were elevated in the stream and later found that the elevated chlorine levels were caused by a discharge of chlorinated potable water from a broken water line.

D. On November 7, 2012, Tyson submitted a Wastewater Bypass Report Form to the Missouri Department of Natural Resources. Tyson constructed a system of interceptor pits and installed sump pumps to direct the water into Tyson's sanitary sewer system to prevent additional water from entering the tributary to Muddy Creek. Tyson estimated that 26,000 gallons of potable water was released into the stream.

E. On November 8, 2012, the Department and the Missouri Department of Conservation (MDC) conducted an investigation to determine the cause of the fish kill, and concluded that the kill was due to chlorine toxicity. A total of 268 dead fish were collected by Tyson staff, Department staff, and MDC staff. On the day of the investigation, the discharge had been contained, and the stream was observed to be clear and flowing with no odor, and also supported aquatic life.

F. On January 29, 2013, the Department issued Notice of Violation (NOV) No. KC2012120312505105 to Tyson for the violations that occurred due to the release of chlorinated potable water.

G. On December 1, 2012, Tyson located the leak with an ultrasonic detector, and was determined that the leak was coming from a fire hydrant. According to the Wastewater Bypass Report Form submitted to the Department by Tyson, the stand pipe and expansive joints were replaced on December 17, 2013, which stopped the leak.

H. As a result of the above investigations, the State incurred costs for staff time, expense and equipment costs, and value of organisms killed in the amount of three thousand three hundred sixty-seven dollars and seventy-one cents ($3,367.71).

I. Section 644.096, RSMo, authorizes 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 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.

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 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 herein and found to have been committed by Tyson at the facility are as follows:

1. Caused pollution of a tributary to Muddy Creek, waters of the state, placed or caused or permitted to be placed a water contaminant, chlorine from a broken potable water line, in a location where it was reasonably certain to cause pollution of waters of the state and to cause a fish kill, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

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.

3. Since November 6, 2012, through December 17, 2012, operated, used, or maintained a water contaminant source – chlorinated drinking water – which discharged to a tributary of Muddy Creek, waters of the state, without a permit.

IV. AGREEMENT

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

C. Tyson 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 two thousand dollars and no cents ($2,000.00). The payment shall be in the form of a check made payable to "Pettis County Treasurer, as Custodian of the Pettis County School Fund." The check in the amount of two thousand dollars and no cents ($2,000.00) is due and payable upon execution of this AOC by Tyson. 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 65102-0176

D. Tyson agrees to pay the State's investigative costs in the amount of three thousand sixty-two dollars and seventy-one cents ($3,367.71) in the form of a certified check or cashier's check made payable to the "*State of Missouri.*" The check in the amount of three thousand sixty-two dollars and seventy-one cents ($3,367.71) is due and payable upon execution of this AOC by Tyson. The check shall be delivered to

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

E. Within sixty (60) days of the effective date of this Order, Tyson agrees to submit to the Department a report describing the results of an ultrasonic leak detection test conducted on all underground potable water lines on Tyson property to identify leaks. This report shall also recommend corrective actions necessary to address the leakage and a schedule to complete the corrective actions. Tyson agrees to obtain all applicable permits necessary to complete the corrective actions.

F. Within thirty (30) days of completing the repairs, Tyson agrees to submit a written report to the Department documenting what repairs have been completed.

G. Should Tyson fail to meet the terms of this AOC, including the deadlines for completion of construction set out in paragraphs E through H, Tyson shall be subject to pay stipulated penalties in the following amounts:

Days of Violation	Amount of Penalty
1 to 30 days	$250.00 per day
31 to 90 days	$500.00 per day
91 days and above	$1,000.00 per day

Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Pettis County Treasurer, as Custodian of the Pettis County School Fund." Any such stipulated penalty shall be paid within ten (10) days 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

H. Nothing in this AOC forgives Tyson 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.

I. 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.

J. 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 Tyson any civil or administrative suit claiming violations of the MCWL, Chapter 644, RSMo, listed in Notice of Violation nos. 19072 SE and 19066 SE.

K. 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 Tyson for its records.

L. Tyson 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, Tyson 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
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 29th day of January, 2014

John Madras

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

Agreed to and Ordered this 16th day of January, 2014

Kevin Igli

Kevin Igli, Senior Vice President, Chief Environmental Health and Safety Officer
Tyson Foods, Incorporated

Copies of the foregoing served by certified mail to:

Mr. John Couch
Tyson Foods, Incorporated
Environmental, Health & Safety Services
2200 Don Tyson Parkway
Springdale, AR 72762-6999

CERTIFIED MAIL:

c: Ms. Diane Huffman, Environmental Protection Agency
Mr. Chris Wieberg, Chief, Operating Permits Section
Ms. Janet Pointer, Accounting Specialist, Accounting Program
Ms. Andrea Collier, Director, Kansas City Regional Office
Missouri Clean Water Commission