

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
 **Browns Iron and Metal** )  
 **4885 S. 135<sup>th</sup> Road** ) **Order No. 2015-WPCB-1333**  
 **Bolivar, MO 65613** )  
 )  
 **Proceeding under the** )  
 **Missouri Clean Water Law** )

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**NOTICE AND ORDER TO ABATE VIOLATIONS  
AND PAY ADMINISTRATIVE PENALTIES**

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SERVE BY CERTIFIED MAIL # 7013 2250 0002 2840 1207  
RETURN RECEIPT REQUESTED

TO: Ellis Brown dba  
Browns Iron and Metal  
4885 South 135<sup>th</sup> Road  
Bolivar, MO 65613

You are hereby notified that on this date the Department of Natural Resources has issued this Notice and Order to Abate Violations and Pay Administrative Penalties to Ellis Brown (respondent) under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri, specifically sections 644.056 and 644.079 RSMo.

Failure to comply with this order is, by itself, a violation of the MCWL under section 644.076 RSMo. Continued non-compliance may result in the department pursuing legal action for injunctive relief, additional penalties of up to \$10,000.00 per day for each day or part thereof of non-compliance, a surcharge of 15% of the penalty described herein, 10% interest on any amounts owed, attorney fees and costs, and/or any other remedy authorized by law, including but not limited to sections 644.056, 644.076, 644.079, and/or 644.096 RSMo.

## FINDINGS OF FACT

1. Mr. Ellis Brown dba Browns Iron and Metal operates a motor vehicle salvage yard and scrap metal recycling operation located at 4885 South 135<sup>th</sup> Road, south of Bolivar, Missouri. The operation is located at SE ¼, SE ¼, Section 31, Township 33 North, Range 22 West, in Polk County. Stormwater from the operation discharges to a tributary of Slagle Creek.

2. The tributary of Slagle Creek is waters of the state as defined by Section 644.016(27) RSMo.

3. Browns Iron and Metal is a fictitious name registered with the Secretary of State.

4. The department issued Missouri State Operating Permit (MSOP) No. MO-R60A333 to the respondent on June 8, 2011, and it expired by its own terms, on May 29, 2013. Pursuant to Part I, Section B.17, Standard Conditions of MSOP No. MO- R60A333, if the permittee wishes to continue an activity regulated by this MSOP after the expiration date of this MSOP, the permittee must apply for a new MSOP 60 days prior to expiration of this MSOP.

5. On May 28, 2014, department staff conducted a compliance inspection of the operation due to an environmental concern filed with the department on May 14, 2014, alleging that the WWTF was operating without an MSOP and oil was running off property and entering surface waters. Prior to the inspection, staff reviewed the files associated with MSOP No. MO-R60A333, and records indicated that the respondent had not submitted the Annual Operations Reports for the years 2011, 2012, and 2013. At the operation, department staff met with Mr. Brown, who granted access to the site. Staff informed Mr. Brown that the respondent's MSOP had expired and needed to be renewed. During the inspection, staff observed a small oil spill of approximately one gallon, the outfall was not clearly marked, and there were no Best

spill of approximately one gallon, the outfall was not clearly marked, and there were no Best Management Practices (BMPs) installed on the property to prevent contaminants from discharging off site.

6. On June 11, 2014, the department issued a Letter of Warning (LOW) to the respondent for failing to renew MSOP No. MO-R60A333 at least 60 days before the expiration date. The department required the respondent to respond in writing to address the actions the company has taken, or intends to take to correct the compliance issues documented within 30 days of issuance of the LOW. The department did not receive a response.

7. On November 3, 2014, the department sent the respondent a letter regarding the LOW issued on June 11, 2014, and offered to meet with the respondents to discuss the violations, and a plan to correct the violations.

8. On November 20, 2014, staff documented that the respondent failed to meet with the department on November 18, 2014, in a memorandum. The memorandum also stated that the department did not receive any correspondence from the respondent.

9. On December 30, 2014, the department issued NOV No. 15979SW to the respondent for violations of the MCWL documented in the May 28, 2014, inspection.

10. On February 17, 2015, the department received an application to renew the MSOP from the respondent.

11. The amount of the administrative penalty included herein was assessed according to the criteria of 10 CSR 20-3.010. From a gravity-based analysis, the violations posed at least a minor potential for harm based on the potential risk to human health, safety, and the environment. The violations were also at least a moderate deviation from the standard required by the MCWL and its implementing regulations. Using the gravity-based matrix, and finding

both the deviation from the standard and the potential for harm, the base penalty falls within a range of \$1,501.00 to \$2,500.00. Since the department documented one violation of the MCWL, and the respondent failed to correct the non-compliance after being informed of the requirements by the department, an administrative penalty in the amount of \$2,000.00 is justified

12. This order is necessary to compel compliance and to prevent, or eliminate, threats to human health and the environment.

### **STATEMENT OF VIOLATIONS**

The respondent violated the MCWL and its implementing regulations as follows:

13. Since May 30, 2013, operated, used or maintained a water contaminant source as an unpermitted motor vehicle salvage yard and scrap metal recycling operation which intermittently discharges to a tributary to Slagle Creek, waters of the state, without an MSOP in violation Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

### **CORRECTIVE ACTIONS**

14. Pursuant to section 644.056 RSMo, the department hereby orders the respondent to complete each of the following corrective actions:

15. Within 30 days from the date of the issuance of this order, the respondent is required to clean up all spills and properly dispose of any contaminated soil on the property.

16. Within 30 days from the date of the issuance of this order, the respondent is required to properly mark all outfalls as required by MSOP No. MO-R60A333.

17. Within 30 days from the date of the issuance of this order, the respondent is required to submit all Annual Operations Reports to the department for the years of 2011, 2012, 2013, and 2014. If the Annual Operation Reports are not available, the respondent shall submit

written correspondence to the department explaining why the reports are not available and what steps the respondent has or will take to prevent a reoccurrence of the violation.

### **PENALTY**

Pursuant to section 644.079 RSMo and 10 CSR 20-3.010, the department hereby orders the respondent to pay administrative penalties for the above-referenced violations as follows:

18. The respondent shall pay to the department an administrative penalty in the amount of \$2,000.00, in which \$1,500.00 of the civil penalty shall be suspended for a period of 2 years from the effective date of Order No. 2015-WPCB-1333 on the conditions the respondent complies with all conditions and requirements of MSOP No. MO-R60A333 and this order.

19. The payment in the amount of \$500.00 is due within 30 days from the date of the issuance of this order and shall be in the form of a certified check or cashiers check made payable to: *Polk County Collector as Custodian of the Polk County School Fund*.

20. Such payment must be delivered to the Department of Natural Resources, c/o Accounting Program, P.O. Box 477, Jefferson City, MO 65102-0477.

### **OTHER PROVISIONS**

21. Any request for an extension of time or to otherwise modify this order may be considered on a case-by-case basis, if the respondent makes a written request to the department within 10 business days of this order, and otherwise provides appropriate justification and/or documentation to the department in a timely manner. Any modification of this order shall be in writing.

22. Compliance with this order resolves only the specific violations described herein, and this order shall not be construed as a waiver or modification or any other requirements of the MCWL and regulations, or any other source of law. Nor does this order resolve any future

violations of this order or any law or regulation. Consistent with 10 CSR 20-3.010(5), this order shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

23. This order shall apply to and be binding upon the respondent and any of its agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the respondent. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not relieve the respondent of its obligation to comply with this order.

#### **NOTICE OF APPEAL RIGHTS**

24. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 30 days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Any appeal should be directed to:

Administrative Hearing Commission  
Truman State Office Building, Room 640  
301 W. High Street  
P.O. Box 1557  
Jefferson City, Missouri 65102  
phone: 573-751-2422  
fax: 573-751-5018  
website: [www.oa.mo.gov/ahc](http://www.oa.mo.gov/ahc)

**SIGNATURE AUTHORITY**

SO ORDERED this 29<sup>th</sup> day of May, 2015 by:

DEPARTMENT OF NATURAL RESOURCES



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John Madras, Director  
Water Protection Program

c: Cindy Davies, Director, Southwest Regional Office  
Jack McManus, Missouri Attorney General's Office  
Ms. Diane Huffman, Environmental Protection Program  
Accounting Program