

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Holts Summit Acres Apartments)
 Wastewater Treatment Facility)
)
)
)
 Proceeding under the)
 Missouri Clean Water Law)

Order No. 2015-WPCB-1343

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

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RETURN RECEIPT REQUESTED

TO: James K. Maddox, President
MACO Management Company, Inc.
P.O. Box 68
Clarkton, MO 63837

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 (order) to MACO Management Company, Inc. (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 noncompliance, 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. MACO Management Co., Inc. is a general for-profit business in good standing and registered with the Missouri Secretary of State.
2. As a part of its business, the respondent owns and operates the Holts Summit Acres Apartments wastewater treatment facility (WWTF) located near Old Highway 54 on Hunter Road, in Holts Summit, Missouri. The apartments consist of approximately 12 units, and wastewater generated by the apartments is treated by an extended aeration package plant with standard aeration and clarifier basins located in the NE ¼, NE ¼, Section 24, Township 45 North, Range 11 West, Callaway County. Effluent from the WWTF discharges to a tributary to Rivaux Creek pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) No. MO-0099945.
3. Rivaux Creek and its tributaries are waters of the state as the term is defined by Section 644.016 (27), RSMo.
4. The tributary to Rivaux Creek, which receives the effluent discharge from the WWTF, is a losing stream as defined in 10 CSR 20-7.031.
5. On April 4, 2008, the department issued MSOP No. MO-0099945 to the respondent, which expired by its own terms on April 3, 2013. MSOP No. MO-0099945 in effect from April 4, 2008 to April 3, 2013, required discharges from the WWTF to comply with the limitations contained in Part A of the MSOP. Pursuant to Part I, Section A.1, Standard Conditions of MSOP No. MO-0099945, if there was a discharge at any time during the reporting

period, the respondent was required take a representative sample and chemically analyze the effluent for water contaminants listed in Part A of the MSOP and submit the results to the department on a monthly Discharge Monitoring Report (DMR) on or before the 28th day of the month following the reporting period. The MSOP contained interim effluents for 5-day Biochemical Oxygen Demand (BOD₅) of 45 mg/L weekly average and 30 mg/L monthly average, Total Suspended Solids (TSS) of 45 mg/L weekly average and 30 mg/L monthly average, and a requirement to monitor Fecal Coliform concentrations that were effective until one day before the expiration of the MSOP. The MSOP also contained final effluent limits for BOD₅ of 15 mg/L weekly average and 10 mg/L monthly average, TSS of 20 mg/L weekly average and 15 mg/L monthly average, and Fecal Coliform of 1,000 cfu/100 mL daily maximum and 400 cfu/100mL monthly average.

6. On October 28, 2013, the department received an application for a construction permit for upgrades to the WWTF that will enable the effluent to comply with final permitted effluent limitations for Fecal Coliform and Total Residual Chlorine (TRC).

7. On December 24, 2013, the department issued Construction Permit No. CP-0001597 to the respondent for installation of disinfection equipment that would enable the effluent to comply with final permitted effluent limitations for Fecal Coliform and TRC.

8. On January 2, 2014, the department sent a certified letter informing Mr. James K. Maddox, President of MACO Management Co., Inc., of the violations observed at the Holts Summit Acres Apartments WWTF and offering to negotiate a plan to achieve compliance. The letter required the respondent to respond to the letter within 15 days of receipt of the letter. The letter was received by the respondent on January 9, 2014.

9. On March 1, 2014, the department reissued MSOP No. MO-0099945 to the respondent which will expire by its own terms on June 30, 2015. MSOP No. MO-0099945 requires discharges from the WWTF to comply with the limitations contained in Part A of the MSOP. Pursuant to Part I, Section A.1, Standard Conditions of MSOP No. MO-0099945, if there is a discharge at any time during the reporting period, the respondent is required to take a representative sample and chemically analyze the effluent for water contaminants listed in Part A of the MSOP and submit the results to the department on a quarterly DMR on or before the 28th day of the month following the reporting period. The MSOP replaces Fecal Coliform effluent limitations with E. coli effluent limitations.

10. Monthly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for 5-day BOD₅ during May 2013, June 2013, July 2013, August 2013, October 2013, November 2013, December 2013 and January 2014.

11. Monthly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for TSS during April 2013, May 2013, June 2013, September 2013, October 2013, November 2013, December 2013 and January 2014.

12. Monthly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for Fecal Coliform during April 2013, May 2013, June 2013, July 2013, September 2013, October 2013, November 2013, December 2013 and January 2014.

13. Quarterly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for BOD₅ during the second and third quarters of 2014.

14. Quarterly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for TSS during the second and third quarters of 2014.

15. Quarterly DMRs submitted to the department document that the effluent discharged from the WWTF failed to comply with applicable permitted effluent limitations for E. coli during the second, third and fourth quarters of 2014.

16. On June 25, 2014, department staff conducted a compliance inspection of the WWTF. During the inspection, staff observed sludge deposits below the WWTF's outfall pipe and in the receiving stream, and dark grey water in the receiving stream downstream of the outfall. Staff observed one blower motor running with no belt, and that air was not being pumped in the aeration basin at the time of the inspection. Staff observed that the water in the aeration basin was grey indicating that the wastewater in the aeration basin was septic and not being properly treated. Staff did not observe chlorination or dechlorination equipment at the WWTF. Staff noted that the WWTF's perimeter fence was damaged, covered in vegetation, and was missing a warning sign on one of the four sides. Department staff obtained effluent sample No. 149152 from the WWTF's outfall and submitted the sample to the Environmental Services Program laboratory for analysis for BOD₅, TSS and E.coli. The results of these analyses document that effluent discharged from the WWTF's outfall violated permitted effluent limitations for BOD₅, TSS and E. coli. During a review of department records, staff found that

the department did not receive the 2013 Annual Sludge Report. Staff also noted that the DMR for February 2014 listed no discharge at any time during the month of February.

17. On July 16, 2014, the department issued Notice of Violation (NOV) No. NER2014070109473522 to the respondent for violations documented during the June 25, 2014, inspection. The inspection report that accompanied the NOV required the respondent to take corrective actions.

18. On August 11, 2014, the department received a letter from Mr. Ned Goss, of Total Environmental Services, Inc., on behalf of the respondent. The letter stated that: 1) sludge deposits were removed from the receiving stream and from the WWTF; 2) the blower motor belt had been replaced and both blowers were operational; and 3) the respondent had hired an engineer to connect Holts Summit Acres Apartments to the city of Holts Summit's public sewer system. An unsigned copy of the 2013 Annual Sludge Report was enclosed with the letter.

19. On December 24, 2014, the department sent two certified letters informing Mr. Maddox and Ms. Tammy Flannagan, agent of the respondent, of the violations documented by department staff at the Holts Summit Acres Apartments WWTF. In this correspondence the department offered to meet with the respondent to discuss a plan to achieve compliance. Both letters were received on December 29, 2014, and in these letters the department requested a response within five days of receipt.

20. 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 moderate 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 \$4,501.00 to \$5,500.00. Since the department documented two violations of the MCWL, and the respondent failed to correct the non-compliance after being informed of the requirements by the department on at least three separate occasions, an administrative penalty in the amount of \$10,000.00 is justified.

21. 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:

22. Caused pollution to a tributary to Rivaux Creek, waters of the state, or placed or caused or permitted to be placed water contaminants in a locations 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.

23. Discharged water contaminants into a tributary to Rivaux Creek, 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.

24. Failed to comply with the effluent limits contained in Part "A" of MSOP No. MO-0099945 in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

25. Failed to operate and maintain WWTF to comply with the MCWL and applicable MSOP conditions, in violation of Section 644.051.1(3) and 644.076.1, RSMo.

CORRECTIVE ACTIONS

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

26. Within thirty (30) days of the date of this order, the respondent is ordered to submit to the department a written plan describing the steps the respondent plans to take to either: i) upgrade or replace the existing WWTF that will address the violations listed in this order; or ii) eliminate the discharge by connection to an area wide wastewater collection and treatment system.

27. If the respondent's plan is to upgrade or replace the existing WWTF, the respondent is ordered to submit to the department for review and approval an engineering report, prepared by a professional engineer licensed to practice in the state of Missouri. The engineering report shall be submitted to the department within 60 days of the effective date of this order and shall evaluate the WWTF and its ability to comply with the applicable effluent limitations, including but not limited to BOD₅, TSS, E. coli and all conditions and requirements of MSOP No. MO-0099945 and 10 CSR 20-8.020. The engineering report shall identify alternatives and recommend upgrades or replacement of the WWTF that will result in compliance with all effluent limitations contained in MSOP No. MO-0099945. The engineering report shall be developed in accordance with Missouri Clean Water Regulation 10 CSR 20-8.

28. Within 15 days of receipt of department comments on the engineering report, the respondent is ordered to respond to the department in writing addressing all comments on the engineering report to the department's satisfaction.

29. Within 30 days receipt of department approval on the engineering report the respondent is order to submit a complete application for a Construction Permit including engineering plans and specifications sealed by a professional engineer licensed to practice in the state of Missouri and the appropriate fee.

30. Within 15 days of receipt of department comments on the construction permit application, plans and specifications, the respondent is ordered to respond to the department in writing addressing all comments to the department's satisfaction.

31. Within 180 of the date the department issues a construction permit for the improvements, the respondent is ordered to complete construction and submit to the department a completed Statement of Work Completed form MO 780-2155 (12-11) including all required supplemental information, appropriate forms and fees.

32. If the department-approved alternative is connection to an area-wide wastewater treatment and collection system, the respondent is ordered to complete construction of a sewer extension within 180 days of the date of this order. The sewer extension shall be designed and sealed by a professional engineer registered in the state of Missouri in accordance with 10 CSR 20-8 and shall be constructed in accordance with the registered professional engineer's designs and plans. If the sewer extension and collection system will be greater than or equal to 1,000 feet in length and will include more than two lift stations, the respondent is ordered to submit to the department for review and approval a complete application for a construction permit, plans and specifications sealed by a professional engineer registered in the state of Missouri and the applicable permit fee for the sewer extension. Prior to beginning construction of the sewer extension, the respondent is ordered to obtain all necessary easements, approval from the

municipality accepting the connection, and if applicable, a construction permit from the department. If a construction permit is not required for the sewer extension, the respondent is ordered to submit to the department a copy of the plans and specifications sealed by a professional engineer licensed to practice in the state of Missouri within 30 days prior to beginning construction of the sewer connection.

33. If the existing WWTF will not be used, the respondent is ordered to submit to the department for review and approval a closure plan developed in accordance with Standard Conditions, Part III, Section H within 90 days of the date of this order. If the existing WWTF will be incorporated into the new department-approved WWTF, a closure plan will not be required.

34. Within 15 days of receipt of department comments on the closure plan, the respondent is ordered to respond in writing to the department addressing all department comments on the closure plan to the department's satisfaction.

35. If applicable, within 120 days of diverting the wastewater flow from the WWTF to a department-approved WWTF or an area-wide wastewater treatment and collection system, but not before receiving written approval from the department for the closure plan, the respondent is ordered to: 1) complete closure of the WWTF pursuant to the closure plan as approved by the department; 2) stabilize the disturbed area with perennial vegetation with 70 percent fully established plant diversity over the entirety of the disturbed area; and 3) submit to the department a letter certifying that the WWTF was closed pursuant to the closure plan approved by the department. In the event the wastewater flow from Holts Summit Acres Apartments is connected to an area-wide wastewater treatment and collection system, the

respondent is ordered to submit to the department an application to terminate MSOP No. MO-0099945 within 30 days of completing close of the WWTF.

36. Immediately upon becoming aware that a deadline or milestone as set forth in this order will not be completed on time, the respondent is ordered to notify the department by telephone or electronic mail, identifying: 1) the deadline that will not be completed; 2) the reason for failing to meet the deadline; and 3) a proposed extension to the deadline. Within five days of notifying the department, the respondent is ordered to submit to the department for review and approval a written request containing the same provisions of Parts 1, 2 and 3 from above. The department may grant an extension if it deems an extension is appropriate. Failure to submit a written notice to the department may constitute a waiver of the respondent's right to request an extension and may be grounds for the department to deny the respondent an extension.

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:

37. Within 30 days from the date of issuance of this order, the respondent shall pay to the department an administrative penalty in the amount of \$10,000.00. A \$10,000.00 payment shall be made by check made payable to: *Callaway County Collector as Custodian of the Callaway County School Fund.*

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

SUBMISSIONS

39. All other documentation submitted to the department for compliance with this order shall be submitted within the timeframes specified to:

Peter Burch
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, Missouri 65102-0176

OTHER PROVISIONS

40. 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.

41. 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.

42. 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

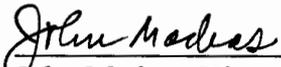
43. If you are adversely affected by this decision, you may be entitled to pursue an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Sections 644.056, 644.079, 640.013, and 621.250, RSMo. To appeal, you must file a petition or notice of appeal with the AHC within 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.ao.mo.gov/ahc

SIGNATURE AUTHORITY

SO ORDERED this 17th day of June 2015 by:

DEPARTMENT OF NATURAL RESOURCES



John Madras, Director
Water Protection Program

c: Ms. Diane Huffman, Environmental Protection Agency
Ms. Irene Crawford, Northeast Regional Office
Mr. Jack McManus, Missouri Attorney General's Office
Missouri Clean Water Commission
Accounting Program