

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

IN THE MATTER OF:

**City of Knox City
Knox City Sewer System
108 East Main
P. O. Box 45
Knox City, MO 63446-0045**

No. 2015-WPCB-1365

SERVE:

**The Honorable Roger Dale Roberts, Mayor
City of Knox City**

ABATEMENT ORDER ON CONSENT

NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) No. 2015-WPCB-1365, by the Department of Natural Resources, is a formal administrative action by the state of Missouri and is being issued because the wastewater treatment facility (WWTF) serving the city of Knox City 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 the city 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.

FINDINGS OF FACT

1. The city has a population of approximately 279 and as part of its business owns and operates a WWTF located in the NE ¼, SW ¼, NW ¼, Section 27, Township 62 North, Range 10 West in Knox County, Missouri. The WWTF, which receives wastewater generated from approximately 128 connections and consists of a three-cell lagoon. The WWTF has a design flow of 28,000 gallons per day (gpd). The design population equivalent is 325 and the design sludge production is 4.875 dry tons/year. Effluent from the WWTF discharges to Little Troublesome Creek (unclassified), pursuant to the requirements and conditions of Missouri State Operating Permit (MSOP) No. MO-0095745, which expires by its own terms on June 17, 2015. Little Troublesome Creek was reclassified on August 20, 2013, to Class C with whole body contact B, with the beneficial uses of irrigation, Livestock and Wildlife watering, Protection of Warm Water Aquatic Life, Human Health-Fish Consumption, Secondary Contact Recreation.

2. Little Troublesome Creek and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.

3. Domestic wastewater is a water contaminant as the term is defined in Section 644.016(24), RSMo.

4. The MSOP was issued to the city on June 18, 2010, and expired by its own terms on June 17, 2015. The MSOP requires the city to sample the effluent discharged from Outfall No. 001 and chemically analyze the effluent sample for the water contaminants listed in Part "A" every month. The MSOP also requires the effluent to comply with the limitations contained in Part "A" and requires the results of the analysis to be submitted to the department on monthly

Discharge Monitoring Reports (DMRs) by the 28th day of the month following the reporting period.

5. The MSOP issued June 18, 2010, included a Schedule of Compliance (SOC) requiring the city to complete improvements necessary to comply with the final permitted limits for Ammonia as Nitrogen on or before June 17, 2013. The city was required to follow the following activity schedule: 1) if modifications of the WWTF are required to meet final MSOP effluent limits for Ammonia as Nitrogen, the city shall submit engineering plans, engineering specifications, and a construction permit application by June 18, 2011, 2) if completion of construction will be more than one year, the city shall submit interim progress reports every 12 months from June 18, 2010, 3) if modifications to the WWTF are not needed to meet final MSOP effluent limits, the city shall submit a letter to the department by June 18, 2011, stating that modifications are not needed, and 4) by June 18, 2013, the WWTF will meet final effluent limits.

6. Monthly DMRs submitted to the department document that the effluent discharged from the city's WWTF failed to comply with the applicable permitted effluent limitations for Ammonia as Nitrogen during the months of February, March, and May 2014; and February 2015.

7. On February 13, 2014, department staff conducted an inspection of the WWTF and collected a sample of the effluent, which was noted to have a slight wastewater odor. Chemical analysis of the sample documented that the effluent of 15.9 mg/L exceeded the 12.1 mg/L daily maximum for Ammonia as Nitrogen. During the inspection, staff also document that the city had failed to collect a representative sample of the effluent due to using a plastic dipper to collect the samples. Staff also documented through a file review that the city had failed to

submit semi-annual Inflow and Infiltration (I&I) reports for April and October 2011, monthly DMRs for March 2013, quarterly influent data for the third quarter of 2010 through the first quarter of 2013 and for the fourth quarter of 2013, and had failed to meet the requirements of the SOC found in the MSOP. As a result of the violations found during the inspection, the department issued Notice of Violation (NOV) No. NER201421815015406 to the city on March 27, 2014.

8. On December 2, 2014, Four Points Land Surveying, Inc. submitted to the department, a Preliminary Engineering Report (PER) on the behalf of the city. The PER proposed a subsurface irrigation system, surface irrigation system, and improvements to the existing WWTF to meet effluent limits. The PER recommended converting the current WWTF into a no-discharge system by adding subsurface irrigation.

9. On December 9, 2014, the department received an application to renew the city's MSOP. The MSOP renewal is pending issuance.

10. On January 7, 2015, the department provided Four Points Land Surveying, Inc. comments on the submitted PER. The department requested a Geohydrologic Evaluation; a map delineating the soils within the primary and secondary soil treatment areas using an aerial photograph; a United States Department of Agriculture (USDA) Natural Resource Conservation Service Knox County Soil survey map; a discussion concerned the soil drainage, lateral water movement and its influences on treating and controlling the effluent; further discussion of frequency and duration for flooding and/or ponding; discussion on the influence of treating and controlling the effluent on described fill material found in soil report; and additional justification for proposed application rate for the proposed design flow.

11. On January 29, 2015, Four Points Land Surveying, Inc. sent a response to the department addressing comments on the PER.

12. On February 13, 2015, the department sent Four Points Land Surveying, Inc. correspondence approving the PER and requested the city submit a construction permit application and an operating permit modification application. To date, the department has not received an application for a construction permit.

13. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establishes civil penalties of up to \$10,000.00 per day per violation.

STATEMENT OF VIOLATIONS

The city has violated the MCWL and its implementing regulations as follows:

14. Failed to collect a representative effluent sample as required by the Standard Conditions Part I of MSOP No. MO-0095745 in violation of Section 644.076.1, RSMo.

15. Failed to upgrade the WWTF to meet Ammonia as Nitrogen limits as required in Part "B", Standard Conditions, and Part "E", SOC, of MSOP No. MO-0095745 in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.010(7)(A).

16. Failed to comply with the effluent limits contained in Part "A" of MSOP No. MO-0095745 in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

17. Caused pollution of Little Troublesome Creek, waters of the state, or placed or caused or permitted to be placed (a) water contaminant(s) in a location(s) 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.

18. Failed to submit complete and timely DMRs as required in Part "C" of MSOP No. MO-0095745 in violation of Section 644.076.1, RSMo, and 10 CSR 20-7.015(9)(D)1.

AGREEMENT

19. The department and the city desire to amicably resolve all claims that may be brought against the city for violations alleged above in Section III, Citations and Conclusions of Law, without the city admitting to the validity or accuracy of such claims.

20. 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.

21. 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 \$8,000.00. The department and city further agrees that \$8,000.00 of the civil penalty shall be suspended for a period of two years on the condition that the city does not violate the MCWL and its implementing regulations or the terms of this AOC.

22. Upon determination that the city has failed to meet the terms of this AOC, including the SOC set out in Paragraphs 25 through 28, the department shall send a written demand for the suspended penalty in the amount of \$8,000.00 to the city. The city shall have 15 days from its receipt of the written demand to submit the suspended penalty in the form of a certified check or cashier's check made payable to "Knox County Treasurer, as custodian of the Knox County School Fund." The check shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

23. In the period of time from the effective date of this AOC until the new or upgraded WWTF is completed, the city shall operate and maintain the existing WWTF at all times in compliance with the conditions and requirements of MSOP No. MO-0095745. All units or components of the existing WWTF shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the WWTF.

24. Within 240 days of the effective date of this AOC, the city shall submit to the department for review and approval, a complete application for a construction permit including the applicable fee, design summary, plans and specifications signed and sealed by a professional engineer licensed to practice in the state of Missouri for improvements that will result in compliance with the MCWL and its implementing regulations.

25. Within 30 days of receipt of department comments on the city's construction permit application, the city shall respond to and adequately address, to the department's satisfaction, all of the department's comments on the construction permit application.

26. Within 365 days of the date the department issues the city a construction permit, the city agrees and is ordered to complete construction of the improvements as approved by the department.

27. Within 60 days of completing construction, the city shall submit to the department a Statement of Work Complete Form, signed, sealed and dated by a professional engineer registered in the state of Missouri certifying that the project is complete and operable in accordance with department approved plans and specifications, and a complete application with the applicable fee to modify the MSOP.

28. Within 60 days of completing construction of the improvements, the city agrees and is ordered to achieve compliance with the final effluent limitations contained in Part "A" of the MSOP.

29. Within 180 days of completing construction, the city agrees and is ordered to develop and implement an Operations and Maintenance (O&M) manual for the city's wastewater collection and land application systems and submit the O&M manual to the department for review. The O&M manual, at a minimum, shall include 1) operating procedures for the mechanical equipment, 2) a schedule for routine and systematic inspections of the WWTF, 3) an inspection and maintenance schedule of the collection and land application systems to identify all short and long term capital investment projects and activities that will be necessary to ensure current and long term compliance with the city's MSOP; and 4) a process to reevaluate the assumptions, schedules, and conclusions of the city's O&M manual at a minimum of every two years or as necessary to ensure it continues to provide a viable planning tool.

SUBMISSIONS

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

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

OTHER PROVISIONS

32. 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 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.

33. Should the city fail to meet the terms of this AOC, including the deadlines for completion of construction set out in Paragraphs 22 through 30, the city shall be subject to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day

34. Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "Knox County Treasurer, as custodian of the Knox County School Fund." Any such stipulated penalty shall be paid within ten days of demand by the department and shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

35. Compliance with this AOC resolves only the specific violations described herein, and this AOC 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.

36. Nothing in this AOC forgives the city 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 non-compliance 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.

37. 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.

38. 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.

39. The city shall comply with the MCWL, Chapter 644, RSMo and its implementing regulations at all times in the future.

COST ANALYSIS FOR COMPLIANCE

Pursuant to Section 644.145, the Cost Analysis for Compliance (CAFCom), which addresses the obligations included within this Order through December 31, 2015, based upon the city's cost estimate of \$576,000.00 through completion of corrective actions outlined in the city's WWTF plan is attached hereto as Exhibit 1. In addition to the city's cost estimate, the department estimates the development of an O&M manual could cost an addition \$10,000.00. This CAFCom does not address future improvements that may be necessary to comply with the

MCWL or its implementing regulations. This AOC requires the city to complete the construction of a WWTF in accordance with a department approved WWTF plan, designs, and specifications.

NOTICE OF APPEAL RIGHTS

By signing this AOC, 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 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.

SIGNATORY AUTHORITY

Agreed to and Ordered this 9th day of February, 2016



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

Agreed to and Ordered this Dec day of 16th, 2015



Roger Dale Roberts, Mayor
Knox City

Copies of the foregoing served by certified mail to:

The Honorable Roger Dale Roberts CERTIFIED MAIL # 7012 2920 0002 0660 6269
Knox City Sewer System
108 East Main
P. O. Box 45
Knox City, MO 63446-0045

c: Ms. Diane Huffman, Environmental Protection Agency
Mr. Chris Wieberg, Chief, Operating Permits Section
Ms. Irene Crawford, Director, Northeast Regional Office
Missouri Clean Water Commission
Accounting Program