

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

**IN THE MATTER OF:**

**City of Perryville  
215 North West Street  
Perryville, MO 63775**

**SERVE:**

**The Honorable Ken Baer, Mayor  
City of Perryville**

**No. 2016-WPCB-1408**

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**ABATEMENT ORDER ON CONSENT**

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**NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuing of this Abatement Order on Consent (AOC) No. 2016-WPCB-1408, 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 Perryville 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 of Perryville is a fourth class municipality with a population of 8,225 people (according to the city's website and 2010 census data) and as part of its business owns and operates a WWTF located in the SW ¼, NE ¼, Section 21, Township 35 N, Range 11 E, Perry County, Missouri. The WWTF consists of a flow equalization basin, mechanical bar screen, grit chamber, two primary clarifiers, pump house with wet well, three trickling filters, three secondary clarifiers, two tertiary sand filters, ultraviolet disinfection, aerated sludge holding tank, and gravity belt thickener. The WWTF has a design population equivalent of 9,000, a design flow of .8 million gallons per day (MGD), an actual flow of 1.0 MGD, and a design sludge production of 912 dry tons per year. Effluent from the WWTF is discharged primarily through Outfall No. 001 into Cinque Hommes Creek (P) by gravity; however, when Cinque Hommes Creek is in flood stage, the effluent is pumped to Outfall No. 002 which also discharges into Cinque Hommes Creek, pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) No. MO-0051144, which expires by its own terms on September 30, 2018.

2. Cinque Hommes 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 August 1, 2015, and will expire by its own terms on September 30, 2018. The MSOP requires the city to sample the effluent discharged from Outfall No. 001 and No. 002 (when in use) and chemically analyze the effluent sample for the water contaminants listed in Part "A". 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 28<sup>th</sup> day of the month following the reporting period.

5. 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 Fecal Coliform during the months of June and October 2014.

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 Carbonaceous Biochemical Oxygen Demand during the months of February 2015.

7. 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 and March 2015.

8. 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 Total Suspended Solids during the months of August 2014 and February 2015.

9. On September 30, 2014, the city’s Show Me Shell lift station at 1608 Constitution Street lost power due a transformer malfunction. The resulting power outage at the lift station activated an alarm and sent a signal to the Perryville Police Department at 4:00 PM; however, a crew was not dispatched to correct the problem and sometime between the evening of September 30, 2014 and October 1, 2014, the lift station began to overflow causing wastewater to enter a tributary to Hunt Branch.

10. Hunt Branch and its tributaries are waters of the state as the term is defined by Section 644.016(27) RSMo.

11. On October 1, 2014, Department of Natural Resources and Missouri Department of Conservation (MDC) staff responded to the Sanitary Sewer Overflow (SSO) after receiving notification from city personnel. Upon arriving at the location of the SSO, staff found that Perryville Public Works were in the process of cleaning up the tributary to Hunt Branch. Department staff observed that the SSO had impacted approximately 0.18 miles of the tributary to Hunt Branch downstream of the lift station and had caused a fish kill.

12. On October 30, 2014, the department issued Notice of Violation No. 1943SE to the city as a result of the SSO at the Show Me lift station and the associated fish kill. As required, the city notified the department by phone within 24 hours of the initial event and provided the department written notification of the SSO/Bypass on October 3, 2014. The city reported that the SSO of the lift station released an estimated total volume of 10,000 gallons of wastewater, and the city recovered and hauled away approximately 9,800 gallons from the tributary.

13. On February 17, 2016, department staff, city of Perryville staff, and the city's engineer from Crawford, Murphy & Tilly Engineers and Consultants held a conference call. During the conference call, the city explained that the effluent violations that occurred around February 2015 at the WWTF were due to an upset from an unknown source and has been corrected. City staff stated that the exceedances of permitted effluent limitations for Fecal Coliform/*Escherichia coli* was corrected by changing the bulbs in the ultraviolet disinfection system. City staff stated that the city created a procedural policy and check list to assure that all alarm activations related to the city's Department of Public Works are handled in a uniform and efficient manner. The city provided the department the policy titled "Procedural Memorandum Summary for Handling of Public Works Alarms" on February 17, 2016. City staff stated that a

generator had been installed at the Show Me lift station to prevent future SSOs due to power outages and will be upgrading all 20 of the city's lift stations with radio telemetry in 2016 and 2017. Finally, city staff stated that the city is in the process of conducting an engineering evaluation of the WWTF to upgrade or replace the system.

14. MCWL and Section 644.096, RSMo, authorize the state, or any political subdivision or agency to recover actual damages, including costs and expenses necessary to establish or collect any sums under Sections 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 violation, sustained by it because of any violation.

15. The department dispatched employees to investigate the October 1, 2014 SSO. In doing so, the department incurred costs and expenses, including but not limited to travel expenses, in the amount of \$357.42. In addition, MDC incurred similar costs and expenses in the amount of \$364.80 which includes the value of aquatic life killed in the amount of \$7.19.

16. 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:

17. Caused pollution of a tributary to Hunt Branch, waters of the state, or placed or caused or permitted to be placed water contaminants in a location where they are reasonably certain to cause pollution to waters of the state in violations of Sections 644.051.1(1) and 644.076.1, RSMo which resulted in a fish kill.

18. Failed to comply with effluent limits contained in Part “A” of MSOP No. MO-0051144 in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

19. Operated, used, or maintained a water contaminant, wastewater, which was discharged to waters of the state without an MSOP, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010(1)(A) and (5)(A).

### **AGREEMENT**

20. 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.

21. 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.

22. 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 \$5,000.00. The department and city further agree that \$4,000.00 of the civil penalty shall be suspended as described in Paragraph 23 below. The payment of the civil penalty in the amount of \$1,000.00 shall be in the form of a check made payable to the “Perry County Treasurer, as custodian of the Perry County School Fund” and is due and payable upon execution of this AOC by the company. The check and the signed copy of this AOC shall be delivered to:

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

23. The suspended penalty described in Paragraph 16 in the amount of \$4,000.00 shall be suspended for a period of two years from the execution of this AOC upon the condition that the city does not violate the MCWL. Upon determination that the city has violated the MCWL, the department shall send a written demand for the suspended penalty to the city. The city shall have 15 days from receipt of the written demand to submit the suspended penalty to the address listed in Paragraph 22

24. The city agrees and is ordered to pay the state's investigative costs and damages in the amount of \$722.22 in the form of a separate check made payable to the "State of Missouri." The check in the amount of \$722.22 is due and payable upon execution of the AOC by the city. The check shall be delivered as provided in Paragraph 22 of this AOC.

#### **SUBMISSIONS**

24. 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**

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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 (2)(c), the city hereby waives the requirement for the department to develop a Cost Analysis for Compliance with respect to the requirements required by this AOC No. 2016-WPCB-1408.

**NOTICE OF APPEAL RIGHTS**

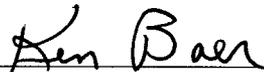
By signing this AOC No. 2016-WPCB-1408, the city consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 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 12 day of May, 2016

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

Agreed to and Ordered this 19th day of April, 2016

  
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Ken Baer, Mayor  
City of Perryville

Copies of the foregoing served by certified mail to:

The Honorable Ken Baer      CERTIFIED MAIL # 7012 2920 0002 0662 8919  
City of Perryville  
215 North West Street  
Perryville, MO 63775

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