

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Harvey Gifford)
 d/b/a Wholesale Auto Works, LLC) **Order No. 2016-WPCB-1409**
)
 Proceeding under the)
 Missouri Clean Water Law)

NOTICE AND ORDER TO ABATE VIOLATIONS

CERTIFIED MAIL # 7012 2920 0002 0662 8681
RETURN RECEIPT REQUESTED

TO: Mr. Harvey Gifford, Registered Agent
Wholesale Auto Works, LLC
17918 East Highway 22
Thompson, MO 65285

You are hereby notified that on this date the Department of Natural Resources has issued this Notice and Order to Abate Violations (Order) to Mr. Harvey Gifford and Wholesale Auto Works, LLC, under the Missouri Clean Water Law (MCWL), Chapter 644 of the Revised Statutes of Missouri (RSMo), specifically Sections 644.056 and 644.079 RSMo. Mr. Gifford and Wholesale Auto Works, LLC, may be collectively referred to as the Respondents for purposes of this Order.

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, 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. Wholesale Auto Works, LLC is an active Limited Liability Company registered with the Missouri Secretary of State that owns a motor vehicle salvage operation in Thompson, Missouri. The operation is located in the SE ¼, SE ¼, Section 24, Township 51 North, Range 10 West in Audrain County, Missouri. Stormwater from the operation discharges to a tributary to Davis Creek.

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

3. On May 30, 2008, the department reissued Missouri State Operating Permit (MSOP) MO-R60A191 to Wholesale Auto Works, LLC. The MSOP expired by its own terms on May 29, 2013.

4. On September 4, 2013, the department issued a Letter of Warning to the Respondents for failure to apply for renewal of the MSOP at least 30 days prior to expiration of the MSOP. The letter instructed the Respondents to submit an application to renew the MSOP or a request to terminate the MSOP by September 18, 2013. The department did not receive a response from the Respondents.

5. On July 29, 2015, department staff conducted a routine compliance inspection of the operation. During the inspection, Mr. Gifford stated that approximately 130 vehicles were stored at the operation, none of which had been processed. Staff informed Mr. Gifford that the operation still required an MSOP and MSOP No. MO-R60A191 would need to be renewed or the operation would need to sell or scrap the remaining vehicles until no more than 50 total vehicle bodies remained at the operation.

6. On August 27, 2015, the department issued Notice of Violation (NOV) No. 2015081915415646 to the Respondents for failure to apply for renewal of the MSOP at least 30 days before expiration of MSOP No. MO-R60A191. The department did not receive a response from the Respondents.

7. On December 3, 2015, department staff attempted to conduct a follow up inspection of the operation. Mr. Gifford denied staff access to the property.

8. On December 21, 2015, the department issued NOV No. NE150034 to the Respondents for failure to apply for renewal of the MSOP at least 30 days before expiration of MSOP No. MO-R60A191. The department did not receive a response from the Respondents.

9. As of the date of this Order, the Respondents failed to submit a Form E - Application for General Permit, or reduce the number of vehicles stored at the operation to fewer than 50 and submit a Form H – Request for Termination of a General Permit.

10. Section 644.051.2 makes it unlawful for any person to operate, use or maintain any water contaminant or point source in this state that is subject to standards, rules or regulations promulgated pursuant to the provisions of sections 644.006 to 644.141 unless such person holds an MSOP from the Missouri Clean Water Commission.

11. This Order is necessary to compel compliance and to prevent or eliminate threats to human health and the environment.

STATEMENT OF VIOLATIONS

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

12. Since May 30, 2013, operated, used, or maintained a water contaminant source – salvage yard – which intermittently discharges to a tributary to Davis Creek, waters of

the state, without an MSOP, in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.200(1)(A).

CORRECTIVE ACTIONS

Pursuant to Section 644.056 RSMo, the department hereby orders the Respondents to complete one of the following corrective action options:

13. Within 30 days receipt of this Order, submit to the department a complete Form E - Application for General Permit, with the appropriate application fee, a map of the operation showing the property boundaries in relation to the adjacent roadways and outfalls, and a Stormwater Pollution Prevention Plan (SWPPP) for the operation prepared in accordance with the concepts and methods described in “Developing Your Stormwater Pollution Prevention Plan, A Guide for Industrial Operators” Document No. EPA 833-B-09-002 published by the United States Environmental Protection Agency in February 2009 and located at https://www3.epa.gov/npdes/pubs/industrial_swppp_guide.pdf

14. If the department provides comments on the SWPPP, within 15 days of days of receipt of the department’s comments, respond in writing to the department addressing all department comments on the SWPPP to the satisfaction of the department.

15. Immediately upon the department’s issuance of an MSOP and continuing until the MSOP is no longer required and is properly terminated comply with all MSOP conditions and requirements, including effluent limitations, monitoring requirements, and SWPPP requirements.

SUBMISSIONS

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

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

OTHER PROVISIONS

17. Any request for an extension of time or to otherwise modify this Order may be considered on a case-by-case basis, if the Respondents make a written request to the department within ten 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.

18. 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.

19. This Order shall apply to and be binding upon the Respondents and any of their agents, subsidiaries, successors, assigns, affiliates, or lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the Respondents. 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 Respondents of their obligation to comply with this Order.

20. For any plan or submittal from the Respondents that is required by this Order and subject to department approval under this Order, the department may approve, disapprove, require revisions, or otherwise modify any such plan or submittal. Any such department decision shall be conveyed in writing to the Respondents. Disapproval may result in further Orders or pursuit of other forms of relief by the department. If the department requires revisions, the Respondents shall submit a revised version of the plan or submittal within ten business days after receiving notice of the department's required revisions, or within such other timeframe as the department may specify. If the department approves or modifies in writing such plan or submittal, it shall become enforceable under this Order, and the Respondents shall commence work and implement such approved or modified plan in accordance with the schedule and provisions contained therein.

NOTICE OF APPEAL RIGHTS

21. Anyone adversely affected by this decision 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. Appeal may be taken by the filing of 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
P.O. Box 1557
Jefferson City, MO 65102
phone: 573-751-2422
fax: 573-751-5018
email: AHC@oa.mo.gov
website: www.ahc.mo.gov

SIGNATURE AUTHORITY

SO ORDERED this 13~~th~~ day of April, 2016 by:

DEPARTMENT OF NATURAL RESOURCES



John Madras, Director
Water Protection Program

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