

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MISSOURI

IN THE MATTER OF:)
)
 Jefferson County Consolidated)
 Public Water Supply District C-1) 2011-WPCB-1157
)
)
 SERVE:)
)
 Mr. Donovan Larson, Manager)

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuing of this Abatement Order on Consent (AOC) number 2011-WPCB-1157 by the Missouri Department of Natural Resources (Department) is a formal administrative action by the State of Missouri and is being issued because the Jefferson County Consolidated Public Water Supply District Number C-1 (District) violated Missouri Clean Water Law (Law) during a water main break that occurred on August 1, 2011. Failure to comply with this AOC is, by itself, a violation of the Law 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 of the Law, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the District of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil penalties for any, including future, violations of the Law, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

- A. As part of its services, the District maintains water lines that transport potable water to approximately 40,000 customers in the unincorporated communities of Barnhart, Imperial, Antonia, and Otto in Jefferson County, Missouri.
- B. On August 1, 2011, Department staff investigated a fish kill near Mastodon State Park. Staff reported traveling to the Frisco Hill Road Bridge over Rock Creek west of Imperial, Missouri, where they observed milky white/tan discolored water in the creek and dead fish to the southwest of the bridge. Staff traveled upstream of the bridge and observed the water in the stream to be clear and the aquatic life

appeared to be healthy. Immediately upstream from the Frisco Hill Road Bridge, staff observed a discharge of murky tan water to Rock Creek from a concrete storm sewer outfall and followed the storm sewer toward Seckman Road where they observed a steady flow of water running down a gravel driveway and into a stormwater drain inlet on Seckman Road. Staff followed the running water to the top of a hill off Mastodon Drive, and observed a utility crew from the District repairing a broken water main.

- C. On August 1, 2011, the Department called the Missouri Department of Conservation (MDC) to report that water from a water main break had entered Rock Creek near the Frisco Hill Road Bridge and caused a fish kill. According to the MDC Report of Pollution Investigations and Fishkills (MDC Report) number 2011020, eight hundred twenty-four (824) fish, with an estimated replacement cost of one hundred eighty-seven dollars and twenty-six cents (\$187.26), were killed.
- D. On August 30, 2011, the Department issued a Notice of Violation to the District as a result of the Department's investigation of the fish kill in Rock Creek. The transmittal letter required the District to submit a written statement to the Department by September 30, 2011, explaining actions taken to correct the problem and prevent a future recurrence. Enclosed with the transmittal letter was a copy of a Report of Compliance Inspection (Department Report), which included observations made by Department investigators, photographs documenting the water main break and its effect on Rock Creek, as well as results of water quality field monitoring conducted during the August 1, 2011, investigation.
- E. As a result of the above investigation, the State of Missouri incurred costs for investigation, damages, and the value of the fish killed in the amount of four-hundred sixty dollars and eighty-two cents (\$460.82).
- F. Section 644.096, RSMo, authorizes the State, or any political subdivision or agency, to recover actual damages, including all costs and expenses necessary to establish or collect any sums under Section 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 the violation, sustained by the State because of the violation.
- G. Section 644.076.1, RSMo, makes it unlawful to violate the Law and regulations promulgated pursuant thereto and establishes civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

III. CITATIONS AND CONCLUSIONS OF LAW

The Department finds that the following violations of the Law, Chapter 644, RSMo, and its implementing regulations have occurred:

1. On August 1, 2011, caused pollution of Rock Creek, 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 of waters of the state, in violation of Sections 644.051.1(1) and 644.076.1 RSMo.

2. On August 1, 2011, discharged water contaminants (chlorinated drinking water) into 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.

IV. AGREEMENT

- A. The Department and the District desire to amicably resolve all claims that might be brought against the District for the violations alleged above in Section III, Citations and Conclusions of Law, without the District admitting the validity or accuracy of such claims.
- B. The provisions of this AOC shall apply to and be binding upon the parties executing this Order, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties.
- C. The District, in compromise and satisfaction of the Department claims relating to the above-referenced violations, agrees, without admitting liability or fault, to pay a civil penalty in the amount of five hundred dollars and no cents (\$500.00). The payment shall be in the form of a certified check or cashier's check made payable to "Jefferson County Treasurer, as custodian of the Jefferson County School Fund." The check in the amount of five hundred dollars and no cents (\$500.00) is due and payable upon execution of this AOC by the District. The check and signed copies of the AOC shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- D. The District agrees to pay the State's investigative costs, damages, and the value of the fish killed, in the amount of four-hundred sixty dollars and eighty-two cents (\$460.82) in the form of a certified check or cashier's check made payable to the "*State of Missouri*." The check in the amount of four-hundred sixty dollars and eighty-two cents (\$460.82) is due and payable upon execution of this AOC by the District. The check shall be delivered to:

Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

- E. Within 30 days execution of this AOC, the District shall submit to the Department, for review and approval, a written response plan for use by District employees

responding to future water main breaks that will minimize damage to waters of the state and the aquatic life therein.

F. The District agrees to complete the Supplemental Environmental Project Plan (SEP) attached to this agreement as Attachment A which further describes the District's future efforts to notify the public about Pharmaceutical Waste Collection Events. The Department and the District agree that the SEP Plan is intended to secure significant environmental protection and improvements with the implementation of the project identified in the SEP Plan, which is not otherwise required by law. The following terms and conditions apply to the SEP Plan:

1. The District shall complete the SEP pursuant to the plans and time schedule set forth in the SEP Plan.
2. The District shall spend at least \$7,623.00 implementing the SEP identified in the SEP Plan. No part of this expenditure shall include federal or state funds, including federal or state low interest loans, contracts, or grants. The District shall include documentation of expenditures made in connection with the SEP as part of the SEP Completion Report required below.
3. The District hereby certifies that the District is not required to perform or develop this SEP by any federal, state, or local law or regulation; nor is the District required to perform or develop this SEP by agreement, grant or injunctive relief in any other case.
4. Any public announcement, oral or written, made by the District pertaining to the District undertaking the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action by the Missouri Department of Natural Resources and Attorney General."
5. The District shall submit to the Department a SEP Completion Report for the SEP described in the SEP Plan no later than May 31, 2013. The SEP Completion Report shall contain the following information for the SEP: (1) a detailed description of the SEP as implemented; (2) itemized costs; (3) an acknowledgement that the SEP has been fully implemented in accordance with the SEP Plan and the provisions of this AOC; and (4) a summary of the environmental and public health benefits resulting from implementation of the SEP.
6. In the event that the Department rejects a SEP Completion Report as required above, the District shall be subject to pay a stipulated penalty of \$500 per day until an acceptable SEP Completion Report is submitted to the Department.
7. Failure to Substantially Complete a SEP: If the total amount expended on implementing the SEP is less than \$7,623.00, the District shall be subject to a stipulated penalty equal to the difference between the amount spent and \$7,623.00.
8. Any reports submitted to the Department pursuant to this paragraph shall reference this AOC and shall be transmitted to:

Ms. Kristi Savage-Clarke
Compliance and Enforcement Section

Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176
Jefferson City, Missouri 65102-0176

- G. Nothing in this AOC forgives the District from future noncompliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forgo pursuing by any legal means any noncompliance with the laws of the State of Missouri.
- H. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they expressed or implied, oral or written, except those that are expressly set forth herein. The terms of this AOC supersede all previous memoranda or understanding, notes, conversations, and agreements, expressed or implied.
- I. The effective date of the AOC shall be the date the Department signs the Order.
- J. The District agrees to comply with the terms and conditions of its Permit, the Law, Chapter 644, RSMo, and the implementing regulations at all times in the future.

V. RIGHT OF APPEAL

By signing this AOC number 2011-WPCB-1157, the District waives any right to appeal, seek judicial review, or otherwise challenge this order pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 644.079.2, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), and Chapters 536, 640, and 644, RSMo, the Missouri Constitution, or any other source of law. AOC number 2011-WPCB-1157 will become final and fully enforceable, as provided in Section 644.076, RSMo upon the date the Department signs.

VI. CORRESPONDENCE AND DOCUMENTATION

Correspondence or documentation with regard to conditions pertinent to operations outlined in this AOC shall be directed to:

Ms. Kristi Savage-Clarke
Compliance and Enforcement Section
Water Protection Program
Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Agreed to and Ordered this 21st day of May, 2012

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

Agreed to and Ordered this 1 day of MAY, 2012

Donovan Larson → Donovan Larson, mgr
~~Bon Smith, Manager~~
Jefferson County Consolidated. Public Water Supply Number C-1

c. Ms. Diane Huffman
Chief, NPDES and Facilities Management Branch
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency, Region VII
901 North Fifth Street
Kansas City, KS 66101

Mr. Jack McManus
Chief Counsel
Agriculture and Environment Division
Office of the Attorney General
P.O. Box 899
Jefferson City, MO 65102-0899

St. Louis Regional Office
Department of Natural Resources
7545 S. Lindbergh, Suite 210
St. Louis, MO 63125

Ms. Janet Pointer
Accounting Program
Missouri Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0176

Dr. Samuel M. Hunter, Chair
Missouri Clean Water Commission
1288 State Highway HH
Sikeston, MO 63801

Mr. Ben A. "Todd" Parnell, III, Vice Chair
Missouri Clean Water Commission
Drury University
900 N. Benton
Springfield, MO 65802

Mr. Samuel D. Leake, Commissioner
Missouri Clean Water Commission
41690 Harrison Trail
Perry, MO 63462

Mr. John Cowherd, Commissioner
Missouri Clean Water Commission
1303 Deer Lane
Mount Vernon, MO 65712

Mr. Buddy Bennett, Commissioner
Missouri Clean Water Commission
7361 Summer Azure Lane
Higginsville, MO 64037

Ms. Wallis Warren, Commissioner
Missouri Clean Water Commission
2671 Jefferiesburg Road
Beaufort, MO 63013

Mr. Dennis Wood, Commissioner
Missouri Clean Water Commission
P.O. Box 112
Kimberling City, MO 65686

Attachment A
Supplemental Environmental Project Plan

Attachment A describes the Supplemental Environmental Project (SEP) to be funded by the Jefferson County Consolidated Public Water Supply District Number C-1 (District) as part of this AOC. The District will spend at least seven thousand six hundred twenty-three dollars (\$7,623.00) and perform certain additional functions as set forth herein to implement this SEP.

SEP Overview:

The District will assist the Jefferson County Sheriff's Department (Sheriff's Department) by providing advertising and publicity for a Pharmaceutical Waste Collection with drop off locations in House Springs and Imperial, Missouri.

SEP Budget and Implementation Period:

The District proposes to assist with advertising for three (3) separate one-day Pharmaceutical Collection Events through April 2013. The total cost of advertising and publicity provided by the District is \$7,623.00. The first collection will be held on April 28, 2012; the second collection will be held in October 2012 and the third collection will be held in April 2013.

Advertising and publicity provided by the District will consist of printing and mailing post cards for the April 28, 2012, collection date, newspaper advertisements, brochures and handouts distributed through drugstores, and a notice posted on the District's website. In addition, banners advertising the events will be hung in the District's office and three (3) Jefferson County fire stations.

As a result of the Pharmaceutical Collection Events, pharmaceutical waste that might otherwise end up polluting Missouri's water will be properly disposed of and the community will receive education regarding pharmaceuticals as a gateway to drug abuse, how pharmaceuticals can enter the water supply, and the dangers of pharmaceuticals as water pollutants.

SEP Budget Detail:

	<u>April 2012 event</u>	
Post card printing and postage.		\$4,754.00
Newspaper advertisement-Jeff Co Leader-1/2 page		\$ 518.00
Drugstore brochures / handouts		\$ 500.00
Website maintenance (set-up and two updates)		\$ 105.00
	<u>October 2012 event</u>	
Newspaper advertisement-Jeff Co Leader-1/2 page		\$ 518.00
Drugstore brochures / handouts		\$ 500.00
Website maintenance (set-up and two updates)		\$ 105.00
	<u>April 2013 event</u>	
Newspaper advertisement-Jeff Co Leader-1/2 page		\$ 518.00
Website maintenance (set-up and two updates)		\$ 105.00
 Total Cost		 \$7,263.00

Any labor costs involved with the above activities will be absorbed by the District

