



- B. On March 8, 2011, Department staff conducted an SSO investigation near the Loxcreen production facility. During this investigation, staff observed white colored wastewater discharging from a manhole near the Loxcreen building and wastewater discharging from a manhole approximately four hundred (400) feet west of the Loxcreen facility. Department staff further documented that the wastewater, which contained solids and had a discernible odor, entered an unnamed tributary to Ditch #6.
- C. As part of this investigation, staff collected water samples and field measurements from three (3) locations. The pH readings from the weir of Loxcreen's pretreatment facility, the property boundary roadside ditch, and the railroad crossing at Getty Lane had pH greater than 9 SU. In addition, all analytical sample results indicated that the Total Recoverable Aluminum (Al) exceeded the aquatic life protection standard of 750 micrograms.
- D. After this investigation, Department staff met with representatives of Loxcreen and the City to inform all parties of the unauthorized discharges from the sewer collection system. During this conference, the City's Superintendent informed Department staff that City personnel discovered they were unable to pump an adequate volume of water from the area surrounding the Loxcreen Lift Station, after a heavy rain event on March 3, 2011, had ceased. The City also explained that there was a blockage in the 9,000 feet of force main which carries wastewater from the Loxcreen production facility and the northern part of the City to the City's wastewater treatment facility. The City further stated that a City representative informed Loxcreen the City would not be able to keep up with Loxcreen's incoming flows from the production facility, due to the blockage in the collection system. The Environmental Manager of Loxcreen indicated to Department staff that after being informed by the City on March 3, 2011, that the City was unable to handle all the water coming into the lift station, Loxcreen reduced its wastewater discharge and began monitoring the manhole. Wastewater operations were reduced or shut down several times between March 3 and March 9, 2011, when discharges at the manhole were observed. After staff showed all parties the elevated pH readings in the water samples, the Environmental Manager of Loxcreen ordered wastewater operations to shut down.
- E. On March 9, 2011, the Department received correspondence from the City, explaining that there was an undetermined blockage in the 9,000 feet of force main which was causing three (3) lift stations to function incorrectly, and creating SSOs from several manholes and the Loxcreen Lift Station.
- F. On April 6, 2011, the Department issued Notice of Violation (NOV) No. 18947 SE to Loxcreen and NOV No. 18946 SE to the City for violations of the Law. In this report, the Department required both the City and Loxcreen to remove, test, and properly dispose of the residual material in the tributary to Ditch #6.

- G. On April 25, 2011, the Department received correspondence from Mr. Ronald Rhymer, Vice-President-Controller of Loxcreen. Mr. Rhymer explained that the Loxcreen Hayti plant has an agreement with the City in which the City has agreed to take up to 120,000 gallons per day (gpd) of treated effluent from the Loxcreen production facility. He also stated that after the City notified Loxcreen it was having difficulty handling the flows coming into the lift station, Loxcreen noted the manhole was overflowing, and reset the wastewater facility pumps to reduce the wastewater flow from 120,000 gpd to 80,000 gpd. Mr. Rhymer explained that Loxcreen continued production at decreased loads from March 4, through March 8, 2011. During this time, Loxcreen reset their pumps to reduce the wastewater discharged to the City's collection system and ceased wastewater operations when they observed overflows from the manholes. Mr. Rhymer noted that repeatedly curtailing, shutting down, and resuming wastewater operations compromised both effluent quality and plant production.
- H. On June 2, 2011, the Department received correspondence from Mr. Rhymer explaining that Loxcreen retained an environmental consultant to collect soil and water samples from the unnamed tributary to Ditch #6 and had coordinated this matter with the Department's Hazardous Waste Program to confirm that solids removed from the ditch would not be characterized as hazardous waste. He also stated that Loxcreen had contacted a local landfill to arrange for disposal of materials removed from the ditch.
- I. On July 1, 2011, the Department received correspondence from Mr. Rhymer stating that Loxcreen's consultant had proposed a plan for removing and disposing of solids from the unnamed tributary to Ditch #6, and that the plan had been approved by the Department's Regional Office. The letter further stated that Loxcreen had sampled the soil in the ditch for aluminum and compared the results with the Missouri Risk-Based Corrective Action levels, and that aluminum in the samples was below the action levels.
- J. On July 26, 2011, the Department received correspondence from Mr. Rhymer stating that Loxcreen's remediation had been completed. The letter stated that more than 10 tons of solids and soil were removed from the ditch and properly disposed, and the ditch was stabilized by hydroseeding.
- K. The Department dispatched employees to investigate the March 8, 2011, SSOs. In doing so, the Department incurred costs and expenses, including but not limited to, water sampling and analysis, photographs, and travel expenses. These costs incurred by the Department total five thousand three hundred fifty-three dollars and thirteen cents (\$5,353.13).
- L. The Law and Section 644.096, RSMo, authorize 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 Sections 644.006 to 644.141, RSMo.

- M. 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. CONCLUSIONS OF LAW

The Department concludes that Loxcreen has violated the following:

1. On March 8, 2011, operated, used, or maintained a water contaminant source-industrial process water and domestic wastewater from a sanitary sewer-which discharged to an unnamed tributary of Ditch #6, waters of the state, without a Missouri State Operating Permit (MSOP), in violation of Sections 644.051.2 and 644.076.1, RSMo, and 10 CSR 20-6.010 (1) (A) and (5) (A); and
2. Placed, or caused, or permitted to be placed, a water contaminant in a location where it is reasonably certain to cause pollution of an unnamed tributary of Ditch #6, waters of the state, in violation of Sections 644.051.1 (1) and 644.076.1, RSMo.

### IV. AGREEMENT

- A. The Department and Loxcreen desire to amicably resolve all claims that might be brought against Loxcreen for the factual allegations set forth above in Section II, Findings of Fact. Loxcreen specifically denies the conclusions of Section III, Conclusions of Law, but desires to resolve any dispute through the execution of the AOC. Neither the Findings of Fact nor the Conclusions of Law shall be offered, used, or admitted into evidence in any proceeding, whether civil, criminal, or administrative now pending or hereinafter initiated, except such proceedings as may hereinafter be initiated by the Department to enforce any provision of this AOC.
- B. 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 Loxcreen under this AOC.
- C. Loxcreen, 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 thousand dollars and no cents (\$5,000.00). The payment shall be made in the form of a certified check or cashier's check made payable to "*Pemiscot County Treasurer, as custodian of the Pemiscot County School Fund.*" The check in the amount of five thousand dollars and no cents

(\$5,000.00) is due and payable upon execution of this AOC by Loxcreen. The check and the signed copy of the AOC shall be delivered to:

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

- D. Loxcreen agrees to pay half of the Department's investigative costs in the amount of two thousand six hundred seventy-six dollars and sixty cents (\$2,676.60) in the form of a certified check or cashier's check made payable to the "State of Missouri." The check in the amount of two thousand six hundred seventy-six dollars and sixty cents (\$2,676.60) is due and payable upon execution of this AOC by Loxcreen. The check shall be delivered to:

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

- E. Loxcreen shall immediately take action to comply with any written notice from the City explaining that the City will not be able to accept some or all of Loxcreen's flows and Loxcreen shall submit copies of these notices to the Department within 48 hours of receipt. If Loxcreen continues to produce wastewater when it is prohibited from discharging to the City sewer, Loxcreen must maintain records of the amount of wastewater produced and describe the process indicating how Loxcreen managed the wastewater. These records must be made available to the Department upon request. In order to prevent future overflows, under no circumstances shall Loxcreen discharge process water and/or wastewater to the environment, in the event that Loxcreen is prohibited from discharging to the City's central wastewater treatment and collection system.
- F. Loxcreen agrees to comply with all State of Missouri Environmental Statutes and their implementing regulations for any and all future activities in the State of Missouri. Nothing herein shall be construed as forgiving any future non-compliance with all State of Missouri Environmental Statutes and their implementing regulations.
- G. Should Loxcreen fail to meet the terms of this AOC, Loxcreen shall be liable for stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$250.00 per day
31 to 90 days	\$500.00 per day
91 days and above	\$1,000.00 per day

- H. Stipulated penalties shall be paid within ten (10) days of demand by the Missouri Department of Natural Resources. Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "*Pemiscot County Treasurer, as custodian of the Pemiscot County School Fund*" and shall be delivered to:

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

- I. No portion of the civil penalty or stipulated penalties paid pursuant to this AOC may be used to reduce Loxcreen's federal or state tax obligation.
- J. The parties further agree that stipulated penalties are not the Department's exclusive remedy for violations of this AOC. The Department expressly reserves the right to seek any other relief it deems appropriate, including but not limited to, action for statutory penalties or injunctive relief against Loxcreen for violations of this AOC. In addition, the Department expressly reserves its right to issue administrative orders authorized by Section 644, RSMo. Loxcreen reserves its right to assert any and all defenses available to it in a proceeding by the Department alleging violations of this AOC.
- K. Nothing in this AOC forgives Loxcreen from future non-compliance with the laws of the State of Missouri, nor requires the Department or the State of Missouri to forego pursuing by any legal means any noncompliance with the laws of the State of Missouri.
- L. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, 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.
- M. 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.
- N. Upon full payment of the above-mentioned penalty and full compliance with all provisions on this AOC, the Department agrees to refrain from initiating or asserting against Loxcreen any civil or administrative proceedings arising out of the matters alleged in Notice of Violation No. 18947 SE.
- O. The effective date of the AOC shall be the date the Department signs the Agreement. The Department shall send a fully executed copy of this AOC to Loxcreen for its records.

V. NO RIGHT OF APPEAL

By signing this AOC No. 2012-WBCB-1204, Loxcreen consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this order pursuant to any provision of law.

VI. TERMINATION

This AOC will terminate within one hundred and eighty (180) days of the effective date on the condition Loxcreen maintains compliance with the Missouri Clean Water Law and its implementing regulations during this time.

VII. CORRESPONDENCE AND DOCUMENTATION

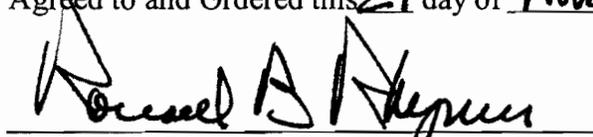
Correspondence or documentation with regard to conditions outlined in this AOC shall be directed to:

Ms. Joan Doerhoff  
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 6th day of December, 2012

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

Agreed to and Ordered this 27 day of NOVEMBER, 2012

  
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Mr. Ronald Rhymer, Vice President  
Loxcreen Company, Incorporated

Copies of the foregoing served by certified mail to:

Mr. Ronald Rhymer, Vice President      CERTIFIED MAIL  
Loxcreen Company, Inc.  
P.O. Box 4004  
West Columbia, SC 29171

c. Ms. Elizabeth Partlow  
Ogletree, Deakins, Nash, Smoak, & Stewart, P.C.  
1320 Main Street  
Columbia, SC 29201-3266

Ms. Diane Huffman  
Chief, NPDES and Facilities Management Branch  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency, Region VII  
11201 Renner Blvd  
Lenexa, KS 66219

Mr. Jackson Bostic, Director  
Southeast Regional Office  
Department of Natural Resources  
2155 North Westwood Boulevard  
Poplar Bluff, MO 63901

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

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

Mr. Samuel D. Leake, Commissioner  
Missouri Clean Water Commission  
1690 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