

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

JUN 18 2013

WATER PROTECTION DIVISION

IN THE MATTER OF:

City of Hayti's
Wastewater Collection System

No. 2013-WPCB-1205

SERVE:

The Honorable Bobby Watkins, Mayor
City of Hayti

ABATEMENT ORDER ON CONSENT

I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS

The issuance of this Abatement Order on Consent (AOC) No. 2013-WPCB-1205 by the Missouri Department of Natural Resources is a formal administrative action by the State of Missouri and is being issued because the wastewater collection system serving the City of Hayti is in violation of the Missouri Clean Water Law (MCWL) and its implementing regulations. 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. Litigation may occur without further 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 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 a judicial enforcement action to recover civil penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

II. FINDINGS OF FACT

A. The city is a fourth class municipality with a population of approximately 3,207 residents. The city owns and operates a wastewater treatment facility located in the NE ¼, SW ¼, Section 27, T19N, R12E, in Pemiscot County. The facility consists of a four-cell aerated wastewater treatment lagoon, in which sludge is land applied. The facility has a design flow of 0.8835 million gallons per day (MGD) and actual flow of 0.430 MGD. Effluent from the facility discharges to Lateral Ditch #22, pursuant to Missouri State Operating Permit (MSOP) No. MO-0057673.

- B. Lateral Ditch #22 is waters of the state as the term is defined by Section 644.016 (27) RSMo.
- C. Domestic wastewater is a water contaminant as the term is defined in Section 644.016 (24), RSMo.
- D. On March 8, 2011, Department staff conducted a Sanitary Sewer Overflow (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 this unauthorized discharge of wastewater and process water entered an unnamed tributary to Ditch #6. Staff further noted that the discharge contained solids and consisted of an offensive odor.
- E. Staff also observed white colored wastewater discharging from a constructed sanitary sewer overflow near the railroad tracks. Department staff documented that this discharge was gray in color, contained solids and also had an offensive odor.
- F. 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 roadside ditch, and the railroad crossing at Getty Lane all exceeded the acceptable range for pH of 6 to 9 SU. In addition, all analytical sample results indicated that the Total Recoverable Aluminum (Al) exceeded the 750 micrograms per liter for Al set forth by the Water Quality Standards.
- G. After this investigation, Department staff met with representatives of the city and of the Loxcreen Company, Incorporated and informed all parties of the unauthorized discharges from the city's sewer collection system. The Environmental Manager of Loxcreen indicated to staff that he ordered the Loxcreen production facility to immediately shut down its operations after staff showed all parties the elevated pH readings from the water samples. 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 facility.
- H. On March 9, 2011, the Department received correspondence from the city, explaining that approximately 9,000 feet of force main is blocked, causing three (3) lift stations not to function correctly and creating SSOs from several manholes and the Loxcreen lift station.
- I. On April 6, 2011, the Department issued Notice of Violation (NOV) no. 18946 SE to the city and NOV no. 18947 SE to Loxcreen for violations of the MCWL. 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. The Department did not receive a response to this NOV, or a SSO Self-Reporting form from the city.

- J. On May 5, 2011, the Department received engineering plans, specification, and a complete application for a construction permit from Schultz and Summers Engineering for installation of a new force main for the Loxcreen lift station. This force main would carry process water and wastewater flow from Loxcreen and wastewater from several area businesses to the city's main lift station.
- K. The Department issued Construction Permit no. SE00315 to the city on May 6, 2011, for construction of an eight (8) inch PVC force main to connect to an existing twelve (12) inch force main and abandon a six (6) inch force main. On June 22, 2011, the Department received a Statement of Work Completed form from Schultz and Summers Engineering certifying that the project was completed in accordance with the plans and specifications as outlined in Construction Permit no. SE00315.
- L. 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.
- M. 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).
- N. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL and regulations promulgated pursuant thereto and establish civil penalties of up to ten thousand dollars (\$10,000.00) per day per violation.

III. CONCLUSIONS OF LAW

Violations of the MCWL and its implementing regulations alleged herein and found to have been committed by city from its collection system are as follows:

1. Placed or caused or permitted to be placed a water contaminant, domestic wastewater, in a location 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;
2. Discharged water contaminants into waters of the state which reduced the quality of such waters below the general criteria of the Water Quality Standards

established by the Missouri Clean Water Commission, in in violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031; and

3. Failed to prevent a bypass of wastewater from the facility's collection system, in violation of the Standard Conditions, Part I, of MSOP No. MO-0057673 and Section 644.076.1, RSMo, and failure to report a bypass of wastewater to the Department within 24 hours after the discharge occurred, in violation of the Standard Conditions, Part I of MSOP No. MO-0057673 and Section 644.076.1, RSMo.

IV. AGREEMENT

- A. The Department and the city desire to amicably resolve all claims that might be brought against the city for the violations alleged above in Section III, Conclusions of Law, without the city 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 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. If the city sells or otherwise transfers the facility, then the city shall cause as a condition of such sale or transfer, that the buyer assume the obligations of the city under this AOC in writing. In such event, the city shall provide thirty (30) days prior written notice of such assumption to the Department.
- C. The city, in compromise and satisfaction of the Department's claims relating to the above-referenced violations, agrees, without admitting liability or fault, to be assessed a civil penalty of fifteen thousand dollars and zero cents (\$15,000.00). The Department and the city further agree that seven thousand five hundred dollars and zero cents (\$7,500.00) of such civil penalty shall be suspended for a period of two (2) years on the condition that the city does not violate the terms of this AOC. The remaining seven thousand five hundred dollars and zero cents (\$7,500.00) of the civil penalty that is currently imposed shall be paid in the form of a check made payable to the to "*Pemiscot County School Treasurer, as custodian of the Pemiscot County School Fund.*" The Department and the city further agree that seven thousand five hundred dollars and zero cents (\$7,500.00) shall be suspended for a period of two (2) years on the condition that the city does not violate the terms of this AOC. Upon determination that the city has failed to meet the terms of this AOC, including the requirements of paragraphs E through F, the Department shall send a written demand for the suspended penalty in the amount of seven thousand five hundred dollars and zero cents (\$7,500.00). The city shall have fifteen (15) days from the receipt of the written demand to submit the suspended penalty. The check in the amount of seven thousand five hundred dollars and zero cents (\$7,500.00) is due and payable upon

execution of this AOC by the city. 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 city agrees to pay fifty (50) percent of the state's investigative costs in the amount of two thousand six hundred seventy-six dollars and sixteen cents (\$2,676.16) 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 sixteen cents (\$2,676.16) is due and payable upon execution of this AOC by the city. The check shall be delivered to:

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

- E. The city shall install inspection ports in the approximately two (2)-mile force main that carries wastewater from the city's main lift station to the city's wastewater treatment lagoon in order to perform routine jetting of the collection system by removing debris and other clogs, preventing SSOs in the future. The city shall complete the installation of the inspection ports pursuant to the following schedule:
1. Within sixty (60) days of the effective date of this AOC, submit to the Department for review and comment, an Inspection Port Plan (IPP) that includes at minimum, the following information:
 - Number of inspection ports proposed to install to ensure the cleanouts are adequate;
 - Location of inspection ports in force main and distance from each port;
 - The method the city determined the appropriate number of inspection ports to be installed; and an
 - Inventory of camera equipment and jetting equipment that is available to the city for cleaning the force main.
 2. Within fifteen (15) days receipt of Department's comments on the IPP, respond to and adequately address, to the Department's satisfaction, all the Department's comments on the IPP;
 3. Within ninety (90) days of Department approval of the IPP, complete installation of the inspection ports, as indicated in the approved IPP; and
 4. Within fifteen (15) days of completing the installation of the inspection ports in the force main, the city shall submit documentation, including written

correspondence, receipts, and photographs, indicating the inspection ports have been installed in accordance with the Department approved IPP.

5. Within ninety (90) days of completing the installation of the inspection ports in the force main, the city shall submit to the Department, for review and approval, a revised Capacity, Management, Operation, and Maintenance Program (CMOM) for the city's wastewater collection and treatment system. The city's revised CMOM shall include a schedule for routine and systematic inspection, maintenance and repair of the collection system, incorporating the recently installed inspection ports, and identify all known short and long term capital investment projects and activities the city anticipates will be necessary to ensure current and long term compliance with the city's Missouri State Operating Permit.

The city's revised CMOM shall include a process to reevaluate the assumptions, schedules, and conclusions of the city's CMOM and revise the city's CMOM as necessary to ensure it continues to provide a viable planning tool that will enable the city to continue to effectively and efficiently operate the city's wastewater treatment system and comply with the requirements of MSOP number MO-0094927. The reevaluation process shall be planned no less frequently than every two (2) years after preparation of the city's Maintenance and Repair Program.

- F. Within sixty (60) days of the effective date of this AOC, the city agrees to install a high-level alarm system on the Loxscreen lift station in the city's collection system. Such a system would send an alarm to a cell phone, fax machine, a pager, and electronic mail, notifying the city workers to respond to a potential bypass situation immediately to prevent future SSOs from occurring at the Loxscreen lift station. Within fifteen (15) days of the city's installation of the alarm system, the city agrees to submit documentation that the high-level alarm system has been installed and is operating sufficiently.
- G. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed with 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 (5) days of notifying the Department, the city shall submit it 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.
- H. Should the city fail to meet the terms of this AOC, including the terms set out in Paragraphs C through F, the city shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100.00 per day
31 to 90 days	\$500.00 per day
91 days and above	\$1,000.00 per day

Stipulated penalties will be paid in the form of a certified or cashiers check made payable to “*Pemiscot County Treasurer, as custodian of the Pemiscot County School Fund.*” Any such stipulated penalty shall be paid within ten (10) days of demand by the Department and shall be delivered to:

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

- I. 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 noncompliance with the laws of the State of Missouri, except for those items covered by this AOC. 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.
- J. 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.
- K. 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.
- L. The city shall comply with the MCWL, Chapter 644, RSMo, and its implementing regulations, and MSOP number MO-0094927 at all times in the future.

V. FINDING OF FINANCIAL AFFORDABILITY

Pursuant to Section 644.145, RSMo, the Department’s Affordability Finding, which addresses the obligations included within this AOC through September 1, 2013, based upon the city’s cost estimate of \$17,363.78 through September 1, 2013, is attached hereto as Exhibit 1. This Affordability Finding does not address future improvements that may be necessary to comply with the MCWL or its implementing regulations. This AOC requires the city to develop and implement a plan for installation of inspection ports in a section of the force main that carries wastewater flow from the city to the facility. This AOC further requires the city to install a high-level alarm system on the Loxcreen lift station. The city agrees to provide additional information requested by the Department as

is reasonably necessary to assist in developing any required Affordability Finding in the future.

VI. RIGHT OF APPEAL

By signing this AOC No. 2013-WPCB-1205, 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, 644.013, 644.056.3, and 644.079.2, 644.145, RSMo, Chapter 536 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.

VI. 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 17th day of July, 2013



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

Agreed to and ordered this 14th day of June, 2013



The Honorable Bobby Watkins, Mayor
City of Hayti

Copies of the foregoing served by certified mail to:

The Honorable Bobby Watkins, Mayor CERTIFIED MAIL:
City of Hayti
P.O. Box 552
Hayti, MO 63851

c. Mr. Lawrence G. Dorroh
Dorroh Seed & Supply Co.
2501 Highway 84
Hayti, MO 63851

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

