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OCT 15 2013

**WATER PROTECTION PROGRAM**

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

**IN THE MATTER OF:**

City of Fulton, Sanitary Landfill

No. 2013-WPCB-1209

**SERVE:**

Mr. Bill Johnson, Director of Administration  
City of Fulton

**ABATEMENT ORDER ON CONSENT**

**I. NOTICE TO RECIPIENTS OF ABATEMENT ORDERS**

The issuance of this Abatement Order on Consent (AOC) No. 2013-WPCB-1209 by the Missouri Department of Natural Resources is a formal administrative action by the State of Missouri and is being issued because the Fulton Sanitary Landfill 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 Section 644.076.1, RSMo. 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 Fulton of liability for, or preclude the Department from, initiating a judicial enforcement action to recover civil penalties for any violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

**II. FINDINGS OF FACT**

A. The Fulton Sanitary Landfill is owned and operated by the city and is located in the SE ¼, Section 26, Township 47 North, Range 10 West, of Callaway County. The landfill operates pursuant to Missouri State Operating Permit (MSOP) No.



MO-0113352. Stormwater from the landfill discharges to the unnamed tributary of Middle River from five (5) separate outfalls. Three (3) of the landfill's outfalls, listed as outfall nos. 001, 002, and 005 drain stormwater from the landfill and two (2) of the outfalls, identified as outfall nos. 003 and 004 drain stormwater from the borrow pit. The volume of stormwater discharged from the landfill's outfalls is dependent on the precipitation event. The landfill ceased receiving refuse on April 29, 2011, and the city is in the process of permanently closing the landfill.

- B. Middle River and its tributaries are waters of the state as the term is defined by Section 644.016 (27), RSMo.
- C. The MSOP was issued to the city on April 24, 2009, and is set to expire on its own terms on April 23, 2014. The MSOP requires the city to sample the effluent discharged from outfall nos. 001, 002, 003, 004, and 005 and chemically analyze the effluent sample for the water contaminants listed in part "A" of the MSOP once per quarter during a rainfall event, when there is runoff from the landfill site. The MSOP also requires the results of the analysis to be submitted to the Department on quarterly discharge monitoring reports (DMRs) by the 28<sup>th</sup> day of the month following the reporting period.
- D. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 001 of the city's landfill failed to comply with the applicable permitted effluent limitations for Chemical Oxygen Demand (COD) during the second and third quarters of 2012; and the first and second quarters of 2013.
- E. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 001 of the city's landfill failed to comply with the applicable permitted effluent limitations for Total Recoverable Iron during the fourth quarter of 2011; first, second, third, and fourth quarters of 2012; and the second quarter of 2013.
- F. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 001 of the city's landfill failed to comply with the applicable permitted effluent limitations for Total Suspended Solids (TSS) during the fourth quarter of 2011; the first, third, and fourth quarters of 2012; and the second quarter of 2013.
- G. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 002 of the city's landfill failed to comply with the applicable permitted effluent limitations for Biochemical Oxygen Demand (BOD) during the second quarter of 2012.
- H. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 002 of the city's landfill failed to comply with the applicable permitted effluent limitations for COD during the second quarter of 2012.
- I. Quarterly DMRs submitted to the Department document that the effluent discharged



from outfall no. 002 of the city's landfill failed to comply with the applicable permitted effluent limitations for Total Recoverable Iron during the fourth quarter of 2011; the first, second, third, and fourth quarters of 2012; and the first and second quarters of 2013.

- J. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 002 of the city's landfill failed to comply with the applicable permitted effluent limitations for TSS during the fourth quarter of 2011; second, third and fourth quarters of 2012; and second quarter of 2013.
- K. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 003 of the city's landfill failed to comply with the applicable permitted limitations for COD during the fourth quarter of 2011 and the second quarter of 2013.
- L. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 003 of the city's landfill failed to comply with the applicable permitted limitations for TSS during the fourth quarter of 2011; second quarter of 2012 and the second quarter of 2013.
- M. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 004 of the city's landfill failed to comply with the applicable permitted limitations for TSS during the second quarter of 2013.
- N. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 005 of the city's landfill failed to comply with the applicable permitted limitations for BOD during the second quarter of 2013.
- O. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no.005 of the city's landfill failed to comply with the applicable permitted limitations for COD during the second quarter of 2013.
- P. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 005 of the city's landfill failed to comply with the applicable permitted limitations for Total Recoverable Iron during the fourth quarter of 2011; the first quarter of 2012; and the second quarter of 2013.
- Q. Quarterly DMRs submitted to the Department document that the effluent discharged from outfall no. 005 of the city's landfill failed to comply with the applicable permitted limitations for TSS during the fourth quarter of 2011 and the second quarter of 2013.
- R. On April 18, 2012, the Department conducted an investigation of the landfill in response to a report of an environmental concern. Prior to the investigation, the inspector drove the perimeter of the landfill and observed that the landfill's slopes were poorly vegetated and there were signs of gully and rill erosion. The inspector



also observed eroded sediment from the landfill had been deposited in the ditch and on property adjacent to the landfill. Once inside the perimeter of the landfill, the inspector spoke with the landfill's foreman, Mr. Keith West. The inspector informed Mr. West that there was a report of sediment from the landfill entering a private lake. Mr. West informed the inspector that the landfill was previously vegetated but the contractors had covered the vegetation with bare soil to close the landfill. The inspector requested to see a copy of the landfill's Stormwater Pollution Prevention Plan (SWPPP) and records of routine inspections of Best Management Practices (BMPs). Mr. West informed the inspector that the landfill had a SWPPP but it was not onsite. The inspector documented that the inspection records failed to document all deficiencies but regular inspections of the landfill occurred five (5) days a week. After speaking with Mr. West, the inspector examined the perimeter of the landfill and documented that the entire landfill was void of vegetation. The inspector also noted the sediment fences were not properly installed or the fences were damaged. The inspector observed sediment deposits in the unnamed tributary of Middle River between the landfill and the private lake. The inspector observed the private lake was light brown in color.

- S. On May 7, 2012, the Department conducted a compliance inspection as a follow up to the April 18, 2012, investigation. During the inspection, the inspector observed that the landfill had recently been seeded and mulched. The inspector observed sheet and rill erosion above the south haul road and sediment fences and straw bales were overtopped with eroded sediment. At the time of the inspection, outfalls #002 and #003 were discharging. The inspector observed sediment deposits directly below outfalls #002 and #003 and water pools in the tributaries below the outfalls were extremely turbid. Department staff also observed a large silt fan downstream of outfall #001 on property adjoining the landfill. Chemical analyses of water quality samples taken during the inspection indicated effluent discharging from outfall #002 exceeded effluent limitations for COD, TSS, and Total Recoverable Iron.
- T. On May 23, 2012, and June 26, 2012, the Department issued NOV No. NER2012050213084728 and NOV No. NER201206181033798 to the city for causing pollution to the unnamed tributary of Middle River, discharging water contaminants to waters of the state, failing to properly implement BMPs, failing to retain a copy of the landfill's SWPPP on site, failing to properly maintain records of deficiencies, and effluent violations documented February 15, 2012, March 22, 2012, and May 7, 2012.
- U. On March 8, 2013, the Department received correspondence from the city explaining that Midwest Environmental Consultants was previously contracted to perform the closure of the landfill and that the Solid Waste Manager for the city conducted inspections on almost a daily basis of the closure operation and process. In this correspondence, the city stated that have completed the following corrective actions in an attempt to control storm water runoff from the landfill: 1) Constructed a dam that would allow a settlement pond where the borrow area was being built, for outfall no. 003; 2) Doubled the size of the settlement pond for outfall no.002; and 3)



Repaired a wrap in the filter of the discharge pipe for outfall no. 002. Additionally, the city included copies of invoices for grass seed that had been spread on the landfill by the city; the city's plan for establishing vegetation, and a copy of a letter from the Department's Land Reclamation Program staff, who provided guidance on stabilizing the landfill.

- V. As a result of the above investigation, the State incurred costs for staff time in the amount of four thousand three hundred ninety-three dollars and sixty-two cents (\$4,393.62).
- W. 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.
- X. Section 644.076.1, RSMo, makes it unlawful to violate the MCWL 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**

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

1. Failed to comply with the effluent limits contained in Part "A" of MSOP No. MO-0113352, in violation of Sections 644.051.1(3) and 644.076.1, RSMo;
2. Caused pollution to the unnamed tributary to Middle River, waters of the state, or placed caused or permitted to be placed a water contaminant, sediment, 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;
3. Discharged water contaminants into waters of the state which reduce the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, in violation of Sections 655.051.1(2) and 644.076.1, RSMo, and 10 CSR 7.031; and
4. Failed to properly install and maintain BMPs for erosion and sediment control as required by MSOP No. MO-0113352, in violation of Sections 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.

- 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 pay a civil penalty in the amount of ten thousand dollars and zero cents (\$10,000.00). The civil penalty shall be paid in the form of certified checks or cashier's checks made payable to "Callaway County School Treasurer, as custodian of the Callaway County School Fund." A check in the amount of ten thousand dollars and zero cents (\$10,000.00) is due and payable upon execution of this AOC. The check and 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. The city agrees to pay the state's investigative costs in the amount four thousand three hundred ninety-three dollars and sixty-two cents (\$4,393.62) 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 thousand three hundred ninety-three dollars and sixty-two cents (\$4,939.62) 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. Within fifteen (15) days of the effective date of this AOC, the city must submit a Work Plan that includes a schedule of implementation of corrective actions to comply with the final permitted effluent limitations from outfalls no. 001, 002, 003, 004, and 005, the conditions and requirements of the operating permit, the MCWL, and its implementing regulations. The Work Plan should include but not be limited to, the following components:

- Dates for seeding, fertilizing, mulching the landfill and techniques used, in order to establish vegetation to protect the final cover system and soil borrow area. The date for seeding and fertilizing shall be no later than September 20, 2013;
- Seeding rates of the different types of grasses used;
- Frequency of irrigating the vegetation, specifically on the east slope of the landfill, and identify the type of irrigation equipment utilized; and
- Frequency of conducting inspections to monitor the progress.



- F. Within fifteen (15) days receipt of the Department's comments on the Department's Work Plan, the city agrees to respond to and adequately address, to the Department's satisfaction, all Department comments on the Work Plan
- G. The city shall implement the schedule contained in the Work Plan as approved by the Department, which shall become fully effective and enforceable as a condition of compliance with this AOC.
- H. The city shall submit quarterly status reports in writing to the Department, describing the status of all activities under the Work Plan. The first quarterly status report shall be due by October 28, 2013, and shall continue to be submitted by the 28<sup>th</sup> day of each quarter for two years from the effective date of this AOC.
- I. Within thirty (30) days of the effective date of this AOC, the city must update the landfill's SWPPP to reflect all BMPs implemented to address storm water and erosion control at the landfill and borrow area, in order to prevent effluent exceedences from outfalls no. 001, 002, 003, 004, and 005. The city further agrees to submit the revised SWPPP to the Department within fifteen (15) days of completing the appropriate updates.
- J. The city agrees to conduct all inspections of the BMPs at least once every seven (7) days and within 48 hours after a rainfall event resulting in storm water runoff on-site has ceased. The city further agrees to properly maintain all records, including copies of the MSOP, the SWPPP, all amendments to the SWPPP, results of monitoring and analysis, and all site inspection reports as required by the special conditions of the operating permit, until the MSOP is terminated.
- K. 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 (5) 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.
- L. Should the city fail to meet the terms of this AOC, including the terms set out in Paragraph C through Paragraph J, the city shall pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$500.00 per day
31 to 90 days	\$1,000.00 per day
91 days and above	\$2,500.00 per day



Stipulated penalties will be paid in the form of a certified or cashier's check made payable to "*Callaway County Treasurer, as Custodian of the Callaway 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

- M. Nothing in this AOC forgives the city 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 for any noncompliance 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.
- N. 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.
- 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 the city for its records.
- P. The city shall comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

**V. RIGHT OF APPEAL**

By signing AOC No. 2013-WPCB-1209, the city consents to its terms and waives any right of appeal pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, and 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.

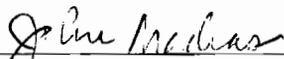


**VI. CORRESPONDENCE AND DOCUMENTATION**

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 24<sup>th</sup> day of January, 2013<sup>4</sup>

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

Agreed to and Ordered this 8<sup>th</sup> day of October, 2013

  
\_\_\_\_\_  
The Honorable LeRoy Benton, Mayor  
City of Fulton

Copies of the foregoing served by certified mail to:

Mr. LeRoy Benton, Mayor  
City of Fulton  
P.O. Box 130  
Fulton, MO 65251

CERTIFIED MAIL:

- c: Ms. Diane Huffman, Environmental Protection Agency  
Mr. Chris Wieberg, Chief, Operating Permits Section  
Ms. Janet Pointer, Accounting Specialist, Accounting Program  
Ms. Irene Crawford, Director, Northeast Regional Office  
Missouri Clean Water Commission



RESOLUTION NUMBER 3193

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF FULTON, MISSOURI, TO SIGN THE DEPARTMENT OF NATURAL RESOURCES ABATEMENT ON CONSENT (AOC) ORDER NO. 2013-WPCB-1209, REGARDING PAST VIOLATIONS TO THE MISSOURI CLEAN WATER LAW AT THE FULTON SANITARY LANDFILL, AND ESTABLISHING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FULTON, MISSOURI, AS FOLLOWS:

SECTION ONE: That the Council hereby approves the signing of the the Department of Natural Resources Abatement on Consent Order No. 2013-WPCB-1209, regarding past violations of the Missouri Clean Water Law and its implementing regulations at the Fulton Sanitary Landfill.

SECTION TWO: That the Mayor, on behalf of the City of Fulton, is hereby authorized to execute said Abatement Order on Consent on behalf of the City.

SECTION THREE: That this Resolution shall be in full force and effect after its passage by the Council and approval by the Mayor.

THIS RESOLUTION ADOPTED THIS 8<sup>th</sup> DAY OF October, 2013.



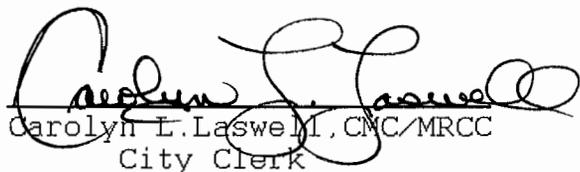
LeRoy D. Benton  
President of the Council

THIS RESOLUTION APPROVED THIS 8<sup>th</sup> DAY OF October, 2013



LeRoy D. Benton  
Mayor

ATTEST:



Carolyn E. Laswell, CMC/MRCC  
City Clerk

